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RAIL SAFETY

HEARING

BEFORE THE

SUBCOMMITTEE ON
SURFACE TRANSPORTATION

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

FIRST SESSION

ON

RAIL SAFETY

Part 1

FEBRUARY 17, 1987

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RAIL SAFETY

TUESDAY, FEBRUARY 17, 1987

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
SUBCOMMITTEE ON SURFACE TRANSPORTATION,
Washington, DC.

The committee met at 9:30 a.m. in room SR-253 Russell Senate Office Building, Hon. J. James Exon (chairman of the subcommittee) presiding.

Staff members assigned to this hearing: Robert Holleyman, professional staff member; and Gerri Hall, minority professional staff member.

OPENING STATEMENT BY SENATOR EXON

Senator EXON. The subcommittee will come to order.

Good morning, and welcome to the first hearing on the Surface Transportation Subcommittee in the 100th Congress. As chairman of the subcommittee, let me assure you that we will be fair and accessible to each and every one of you representing the different points of view that undoubtedly will come up over the Congress. I hope that you will come forth to see this Senator or members of our staff at any time that you have any matters of concern that could affect legislation that will be coming in front of this subcommittee and, as a result, anything that might be forwarded on to the committee as a whole.

The tragic Conrail/Amtrak crash last month in Maryland brought the subject of rail safety back to the forefront of America's attention. A key responsibility of each of the witnesses testifying today is accident prevention and safety promotion. Even though post mortems cannot help the victims of past accidents, they can help prevent future accidents. As safe as we think our railroads are, a tragedy always makes it clear that we must continue to improve safety practices.

As policymakers and executives in the transportation business, it is your direct responsibility to insure that safety is given the highest priority. Congress is here to give you the tools necessary to do the job, but only you can implement and enforce the laws and the regulations.

This morning we will discuss several important rail safety matters, including the related subject of random drug and alcohol testing of all, and I underline all, commercial vehicles a matter which I intend to raise. I want to hear the perspective of each witness on the effectiveness of the overall Federal Rail Safety Program. With representatives of the railroad industry, labor and government

here present, I believe we can expect a thorough session on rail safety.

I also want to explore the safety lessons learned from the recent Conrail/Amtrak accident as it relates to passenger safety and the possibility of diverting freight trains off of the Northeast Corridor.

The lack of licensing requirements for railroad engineers and other operating personnel is an important subject which we will address today. I want the witnesses to discuss the pros and cons of this issue, since it seems to me there is need for improvement.

Inspection and enforcement are keys to rail safety. It is essential that we review whether the Federal Railroad Administration has a sufficient number of safety inspectors and legal staff to enforce rail safety regulations. We also must consider whether the current fines and penalties need to be increased. Currently the maximum penalty that the F.R.A. can assess is $2,500 per violation, a level which was set in law way back in 1970 and not indexed for inflation.

Finally, I specifically want each witness to comment on the related subject of random drug and alcohol testing. I believe that passenger safety on railroads like that in the skies and on the highways is our paramount concern. On Friday, the full Commerce Committee will hold a hearing on random testing legislation for safety-related personnel associated with railroads and airlines.

Some type of random testing legislation stands a good chance of passage in the Senate; however, at this point I do not believe limiting random testings to railroad and airline personnel goes far enough. I think any random testing bill should be all encompassing and include the operations of any commercial vehicles which transport or serve the public, including bus drivers and truck drivers.

It is simply not enough to endorse a drug free work environment. That is a good cliche, but we have to put some teeth in it. We cannot do much in this area without taking steps to insure that something significant happens and some significant changes are made. I believe the American people expect us to take steps necessary to insure that the traveling public are safe.

I recognize the Constitutional issues involved in random testing, but they need to be addressed in an overall context of what is best to insure safety. While Federal courts have stopped some random testing programs, the reason may be that Congress has never spoken directly to the issue.

Senator Rockefeller do you have a statement?

OPENING STATEMENT BY SENATOR ROCKEFELLER

Senator ROCKEFELLER. Mr. Chairman, I want to thank you for calling these hearings. They are of consequence not only because of the recent tragic accident between an Amtrak train and Conrail locomotives, but because safety should be a fundamental concern to a reliable passenger and freight rail system.

Very simply, we cannot help but strive to improve our record on rail safety. The reliance on rail transportation to move such things as hazardous materials in and around our communities calls on us to improve the safety record, no matter how much progress might

have been made in recent years. The human impact as well as the economic cost of failing to do so is too great.

There is no magic cure to an improved rail safety record. I'm inclined to think that modern technology can help part of the way and we should implement those advances that will provide for greater safety and reliability. However, human factors will always plague us—whether it is an inspection program that lacks diligence or drug and alcohol abuse by a minority of employees. In all, it is likely to be less the work of this committee, and more a renewed and collective commitment to safety by management, labor, and government, that will yield results.

Mr. Chairman, I look forward to our work on this matter.

Senator EXON. Senator Danforth?

OPENING STATEMENT BY SENATOR DANFORTH

Senator DANFORTH. Thank you, Mr. Chairman, for this opportunity to share my thoughts on a topic of vital importance to all of us. Before I begin, I would like to make an observation. You are about to hear from a wide array of witnesses who will offer more or less divergent views on the subject of rail safety. They will present a panoply of problems they would ask this Subcommittee to address. They will offer as many solutions based on their unique perspectives and their particular interests. However, they will agree on the point: Alcohol and drug abuse among transportation section employees threatens the lives of thousands of Americans daily; It must be stopped.

The tragedy of the accident of an Amtrak train and a Conrail train several weeks ago brought home to all of us the danger of drug use by people who are operating on the railroad. I realize we must be careful not to prejudge the cause of this accident. Many different factors may have been involved, many of which will be considered today. The fact remains that the engineer and brakeman of the Conrail train tested positive for marijuana use.

Unfortunately, the Amtrak accident is only the latest example of this pervasive problem. Since 1975, about 50 train accidents have involved drug and alcohol use. In those accidents, 37 people were killed, 80 were injured. Surely we should do everything in our power to see that drugs and alcohol no longer play a tragic role in rail transportation.

At the present time with respect to railroads, there is a requirement for testing in the case of initial employment, in the case of an accident, or for probable cause. It is clear to me that current FRA rules, while commendable, simply do not go far enough. In the interest of the American public, it is time for the Federal Government to strike hard and fast against substance abuse in rail transportation.

I believe the best course is for Congress to mandate random drug testing for certain safety sensitive transportation employees. On January 21, I reintroduced provisions that I had included, but which were not retained, in the Omnibus Drug Bill of 1986, which was enacted into law late last year.

S. 356 is very straight forward and simple. It would require random drug testing of railroad engineers and employees responsi-

ble for the safety of railroad operations. Alcohol and drug testing for key airline personnel, for which no requirements currently exist, would also be required. I am confident that such legislation could be implemented by the FRA and FAA in a manner that results in safer transportation, while ensuring that those who do not use drugs are not wrongly penalized.

The full Senate Commerce Committee has scheduled a hearing for February 20, 1987, which will focus exclusively on the need for alcohol and drug testing legislation. In the meantime, I commend you for your interest in seeking to provide needed protection to the traveling public in rail and other modes.

Senator EXON. Thank you, Senator Pressler?

OPENING STATEMENT BY SENATOR PRESSLER

Senator PRESSLER. Thank you Mr. Chairman. I would like to make just a brief statement before proceeding this morning. Rail Safety is an extremely important issue for this Committee to address, and I want to congratulate you for holding this hearing. The tragic January 4 Amtrak/Conrail accident demonstrated with gruesome detail the need for greater attention to rail safety problems. It is important that we take a close look at our overall safety program to make certain the standards are high enough to be effective, and clear enough to be enforced.

In all modes of transportation, safety plays a key role. It is vitally important that the safety standards set provide adequate performance results and are being effectively enforced. If the current standards are unable to provide for a safe transportation system, then new criteria must be developed.

There are many aspects to consider when defining safety criterion. However, no stone should go unturned when it comes to such an important subject. All areas should be looked into and scrutinized to provide the best possible safety measures available to our railways.

I am very interested to hear what action, if any, is being taken regarding testing for drug and alcohol abuse within the railroad industry. Nowhere does the abuse of drugs and alcohol have such a destructive result than in our nation's transportation system.

Another topic which I am curious to learn more about regards the impact of deregulation on rail safety. The effects of deregulation on the airline and motor carrier industry concern me greatly. It has been my feeling that deregulation of those modes of transportation has had a serious detrimental impact on safety in the affected industries. I am interested in exploring whether railroad deregulation had a similar adverse impact on rail safety.

Mr. Chairman, before I close, let me address very briefly an issue that I believe has been overlooked to some extent in the rail safety areas. The primary focus of the safety debate has been—and should be—on passenger service. I hope we don't overlook the very real safety concerns relating to freight service—particularly on light density lines which are often subject to deferred maintenance or allowed to totally deteriorate prior to abandonment. Derailments proliferate on these lines. The employees' lives are in jeopardy, the general public is subject to unsafe hazardous materials exposure,

etc. In my home state of South Dakota for example, we experienced several derailments in the past few months. Fortunately, no one was injured and there were no hazardous materials being shipped then, but the potential is there. These lines need to be better maintained. Derailments on light density freight lines are an all too common occurrence and I believe we, and the Administration, need to be more attentive to this program. Programs like Local Rail Service Assistance and Section 505 financing help to alleviate the maintenance problem—particularly on the light density lines where it is most acute. Mr. Chairman, I know you and others in this committee have been great champions in this area. I wish we would see a little more support from the Administration. I hope the witnesses will address this aspect of the problem. I want to explore it a bit further today.

Mr. Chairman, let me congratulate you again on holding these hearings and I am confident that we will gain much from them and have a better understanding of rail safety problems. It is imperative that we develop a keen grasp of the issues and work to better our rail system.

Senator EXON. The Chairman has submitted an opening statement for the record which I will include at this point. He is tied up over in the Intelligence Committee.

OPENING STATEMENT BY THE CHAIRMAN

I wish to commend Senator Exon, the new Chairman of the Surface Transportation Subcommittee, for scheduling the first hearing of his Subcommittee on the issue of rail safety. I feel confident that under his leadership our Committee's inquiry into this important issue will be a sound one.

Rail safety has received a great deal of public attention in recent weeks, much of it centering on the collision in Maryland last month between an Amtrak passenger train and three Conrail locomotives. That accident, which killed 16 people and injured more than 170 others, serves as a sobering reminder of just how tragic the consequences can be when things go wrong in rail transportation.

It is, therefore, imperative that the Commerce Committee, which has jurisdiction over the issue of rail safety, does all that it can to examine the causes of this tragic accident and to try to prevent similar accidents from occurring in the future. That is why the Subcommittee's inquiry today will not be limited to the events of January 4. Rather, this Subcommittee will seek to take an overall look at the issue of rail safety, with a eye toward any legislative changes that might be necessary to insure that our rail system is as safe as it can be.

As the Committee exercises its oversight authority in the area of rail safety, it is important that we hear from those who are most knowledgeable in the area. I believe that the witnesses scheduled to testify today should be of benefit to us in this regard. The Federal Railroad Administrator, whose office has primary day-to-day responsibility in the area of rail safety, is here so that we can determine just how well the Federal safety laws are working and how they are being enforced. The Chairman of the National Transportation Safety Board will offer us his opinions regarding the state of rail safety. Also scheduled to testify are representatives of rail labor and management, who will offer their own perspectives on this issue.

There are a number of critical issues which I and the other members of this Subcommittee want today's witnesses to address. Questions such as: How safe is the rail industry? Are rail safety laws as complete and up-to-date as they should be? Should some type of federal license be required for operating personnel? Is the rail industry fully utilizing the best safety devices that are available? In addition, we the Subcommittee will seek to determine whether the government should establish requirements for automatic braking systems, better communications equipment and other safety devices that cannot be tampered with.

It is imperative that this Subcommittee review just how well the Federal Railroad Administration is carrying out its responsibility to enforce our safety laws, as well as the agency's inspection and enforcement program to determine whether existing

safety violations are being discovered and addressed. We also need to look at the adequacy of the current civil penalty system.

Finally, we need to look at the level of Federal funding devoted to rail safety, as well as funding provided to the states for assistance in carrying out their rail safety programs. Are these funds adequate and are they being put to the best use?

It is my hope that today's testimony will produce a wealth of ideas aimed at resolving these issues. There is one further safety problem, though, for which there already is a clear solution. That is the area of drug use and on-the-job alcohol use by transportation employees. Our goal is clear, we must do all we can to eliminate drug and alcohol use as a factor in rail and airline accidents.

Legislation I have introduced, S. 362, would establish a system of testing—including random tests—to help us identify rail and airline employees who are creating a public risk by using illegal drugs or alcohol on the job. Since we in government have a responsibility to provide for the safe conveyance of the travelling public, we must take the precautions necessary to prevent drug or alcohol impaired individuals from performing safety-sensitive jobs on trains or planes. Random drug and alcohol testing is the only practical method of doing that.

This Friday, I will chair a full Commerce Committee hearing on the issue of random drug and alcohol testing. However, to the extent that drug and alcohol abuse is one factor that must be addressed in the context of rail safety, and one which I know is important to the Chairman of this Subcommittee, I will be interested in hearing the testimony of these witnesses on this subject. Then, on Friday, we can fully develop this issue with the broader group of witnesses we have scheduled to testify.

I look forward to working with the Subcommittee Chairman, the Ranking Member and other members of this Subcommittee on both rail safety and the other important issues that will come before us.

Senator EXON. With that and with the coming of the ranking minority member, Senator Kasten, very shortly, at that time I will call upon him for any remarks that he has, but at this time I cannot tell you how glad I am to have two of my colleagues in the Congress who have worked very long and very hard on this issue already. They have responsibilities in other areas of the Congress and, indeed, they have introduced some legislation for us to consider.

So at this time I would like to welcome the Honorable Cardiss Collins of the United States House of Representatives and my colleague, Senator Frank Lautenberg, who is with us today, who has been very active in this area. Welcome to both of you, and we will recognize whichever one of you wishes to speak first.

STATEMENT OF HON. FRANK R. LAUTENBERG, U.S. SENATOR FROM NEW JERSEY

Senator LAUTENBERG. I thank the Congresswoman for the courtesy of allowing me the opportunity to go first.

Mr. Chairman, as you know, being a member of the Budget Committee, we have a Budget Committee hearing right after this, and I want to be there as promptly as I can.

Mr. Chairman, you have touched on many issues, and I hope that these hearings will result in some positive legislation. I think we desperately need it because on Sunday, January 4, 1987 when that Amtrak passenger train collided with the Conrail locomotive in Chase, Maryland, it was a tragic accident, with 16 people dead and more than 170 injured and damage estimates of more than $15 million.

That accident focused our attention on rail safety, and it brought several issues to light. In the wake of the accident, as you suggest-

ed, Mr. Chairman, we need to take a close look at rail safety and how we can improve it.

I visited the site the morning after the accident, and several thoughts plagued me. One was was this an accident waiting to happen? What had gone wrong with our rail safety system that would permit such an accident to occur? As Chairman of the Subcommittee on Transportation Appropriations, I have an obligation to look closely at the circumstances surrounding that accident. To see if we are devoting enough resources to rail safety and if those resources are appropriately directed.

The administration has persistently attacked Amtrak's budget. It has slashed funding for rail programs. Now the President proposes eliminating funding for Amtrak and holding a fire sale of its assets. But the recent accident demonstrates the importance of adequate funding for rail safety programs, and I intend to scrutinize those budget proposals. I am going to work to insure that Amtrak is adequately funded. I want to be able to tell the rail traveler that we are not going to sacrifice safety for the sake of a few bucks.

On January 21, 1987, I held a hearing of my subcommittee on the accident, and many of the same witnesses you are going to hear from today testified. Several key issues were raised. We must work together to solve the problems plaguing our rail network. Today I would like to share with you some of my conclusions about the accident.

It is clear that that accident was due largely to human error. We can never eliminate that completely, but we can and must work to reduce the impact of the human intervention. On February 2, 1987, I sent a letter to Secretary Dole outlining nine issues raised at the January hearing, and I would like to include that letter, if I may, Mr. Chairman, as part of the record.

Senator EXON. We are very happy to have that as part of the record.

[The letter follows:]

U.S. SENATE,
COMMITTEE ON APPROPRIATIONS,
Washington, DC, February 2, 1987.

Hon. ELIZABETH H. DOLE,
Secretary of Transportation,
Department of Transporation, Washington, DC.

DEAR MADAM SECRETARY: On Tuesday, January 20, the Subcommittee on Transportation and related agencies held a hearing on the tragic crash of AMTRAK's Colonial with three Conrail locomotives near Chase, Maryland earlier this month. Sixteen lives were lost in the crash and the preliminary damage estimates exceed $15 million.

The purpose of the hearing was to assess the implications of this accident for the performance of our rail safety system and for the management and funding of the rail safety program which you administer. Passenger safety was, of course, of particular concern, especially on the high speed trackage of the Northeast Corridor.

The hearing raised serious questions on several crucial matters of rail safety. There was conflicting testimony, for example, on the priority that safety is given in day to day rail operations, on the adequacy of procedures for assuring compliance with safety rules, on the effectiveness of your enforcement program, and on how best to achieve an alcohol and drug free environment in the rail industry. These are important, complicated, and contentious issues. The Subcommittee will carefully evaluate the hearing record and supplementary information before reaching any final conclusions. Some of the recommendations we heard will require legislation which lies beyond the jurisdiction of the Appropriations Committee.

This is no excuse for delay, however. In my judgment, there are certain measures that can and should be taken now to improve rail safety and restore public confidence.

First, let me commend you for announcing your intention to make elimination of drug and alcohol abuse from public transportation a priority objective. The development of a sensible and effective rule for the aviation industry is long overdue. I urge you to make every effort to expedite the rulemaking initiated by FAA early last month.

I also share your goal of strengthening the effectiveness of the Federal Railroad Administration's drug and alcohol abuse rule. While Congress considers legislation authorizing procedures in addition to those already in place, it is clear that the administration of the current rule can be improved.

In this regard, I have two recommendations. Train crews should be required to check in face-to-face with a supervisor when they come on duty. My understanding is that there is no such requirement at present. Such a check-in procedure would, I believe, both deter employees from reporting for work while under the influence of alcohol or drugs and improve the chances that those who do would be detected and removed from service.

FRA should aggressively enforce Subpart E of the rule (relating to Indentification of Troubled Employees). Every carrier should be required to establish a referral and rehabilitation program consistent with the provisions of Subpart E. In addition, FRA should systematically monitor these programs to assure that they are being effectively implemented and managed. Where necessary FRA should provide technical assistance to both the carrier and employee representatives to assure that troubled employees are identified, removed from service, and given the opportunity for rehabilitation.

One final point on drug testing in general should be mentioned. I believe that any additional rules should include provision for an amnesty period before the new testing procedures are put into effect. During this period, employees with drug dependencies should have the right to disclose their problem and seek rehabilitation without fear of censure, penalty, or sanction. Such an amnesty provision would, in my judgment, be both fair and effective in achieving the objective of a drug-free environment in safety-critical occupations.

Second, the investigative record makes it painfully clear that this accident would not have happened had the Conrail locomotive been equipped with Automatic Train Control (ATC). The National Transportation Safety Board has recommended ATC on the Northeast Corridor since the early 1970's. The Board has recently reaffirmed that recommendation in the wake of the Colonial tragedy. I urge you to move promptly to institute a rule requiring appropriate ATC on all trains in the Corridor as soon as practicable.

Third, for many years now, concerns have been raised about the mixed use of Corridor high speed trackage for both passenger and freight service. Mr. Richard B. Hasselman, Senior Vice President of Conrail, indicated at our hearing that his company would be willing to consider further measures to reduce freight traffic on the Corridor. I urge you to seize this opportunity to work with AMTRAK and Conrail to develop a feasible plan for moving as much freight as possible off the Corridor, in the near term, and restricting what remains to off-hours for passenger traffic.

Fourth, the record also indicates the need to strengthen procedures for assuring compliance with predeparture tests and inspections and, more generally, with safety-related maintenance requirements. As you know, the FAA requires the commercial aviation industry to document compliance with mandatory well-defined maintenance schedules. The core of the system is certification by different individuals at several points in the process that the required maintenance has been performed.

I believe than an analogous, perhaps less elaborate, system should be required in the rail industry. If such a system were in place, it would be a relatively simple matter to fix responsibility for failure of safety-critical equipment. In addition, such a system should help to prevent the intentional disablement of safety devices such as warning whistles and speed controls. Multiple certification by qualified personnel would also promote full compliance with the required predeparture tests and inspections.

Fifth, I am convinced that a Federal license should be required for locomotive engineers. Today, as you know, no license of any kind is requred. In my judgment, no one should be permitted to get behind the throttle of an engine pulling hundreds of passengers or tons of cargo without a license to prove he or she possesses the requisite skills and qualifications. Whether such a licensure program can be established without legislation is debatable. But I believe it is well within your authority

to establish minimum standards for the training and qualification of engineers (and for that matter, other operating employees as well). I urge you to initiate a rule-making to set such standards for engineers as a possible first step in creating a system of Federal licensure.

Sixth, the Conrail locomotive involved in the Colonial crash lacked an operable train-to-train and train-to-station radio. From what is now known about the timing of the accident, it seems doubtful that the Conrail crew could or would have been able to alert either the Colonial or the signal tower controlling that block in time. However, radio capability could made the critical difference in slightly altered circumstances. The NTSB recommendations issued after the accident include operable train-to-train and train-to-station radios. The FRA, I understand, began hearings on radio-communication problems January 28th. I urge you to move as quickly as possible to develop a rule addressing the problems in this area, including a requirement for operable radios with train-to-train and train-to-station capability.

Seventh, the Subcommittee has been told that employees do report violations of safety rules and requirements to FRA inspectors have been subject to later harrassment and reprisal by the carrier involved. The Department should immediately institute a process for affording "whistle blower" protection to such individuals.

Eighth, the AMTRAK engine involved in the collision had no pulse event recorder. I believe all locomotives should be required to carry such instruments and urge you to promulgate a rule incorporating this requirement without delay.

Finally, the effectiveness of FRA's current approach to enforcement has also been seriously questioned. I am concerned that only a small proportion of recorded safety defects are reported as violations. Moreover, FRA's apparent willingness to settle almost all the violations that are reported out of Court for substantially less than the penalty originally assessed tends to undermine the deterrent effect of existing sanctions. It could also damage the morale of the inspector force. I request that your office conduct a review of FRA enforcement policy and inform me, if you could, within 60 days, of the improvements you intend to implement. I will be especially interested in the criteria you might propose for deciding what classes of defects should be reported as violations and in any changes that may be necessary to increase the percentage of penalty assessments actually collected.

I look forward to working with you on these and other initiatives to improve safety in all modes of transportation.

Sincerely yours,

FRANK R. LAUTENBERG,
U.S. Senator.

Senator LAUTENBERG. I want to raise some of the issues that I think need prompt attention.

First, as you mentioned, Mr. Chairman, drug and alcohol abuse among public transportation employees is a thorny issue. Employees do not want their rights trampled in a drug testing stampede. Workers' rights certainly have to be protected, but so must the rights of the traveling public: The right to travel safely; and the right to expect that when they board a bus, a train or a plane, the crew and those managing the crew are competent, well trained and drug or impairment free.

Drugs may have played a part in the January 4, 1987 crash. We may never know how much. The Conrail engineer said what he did on his own time was his own business. But when his personal life intrudes on his public duties, it is no longer just his business. It is the riding public's business, and it is our business.

I recently rode in the cab of a Metroliner in the Northeast Corridor. I was there with the engineer. It is quite a thrill, I must say, Mr. Chairman. We were traveling at speeds in excess of 100 miles per hour, and it was an eye-opening experience. The demands placed on the engineer's alertness and abilities are enormous. Constant attention has to be paid to the track ahead, to signals, to communications. There are precious few moments when his attention can lapse.

As a matter of fact, there is an alert system in that cab that goes off every 45 seconds and, unless he changes his position or does something different, a whistle will blow and a light will glow. He has to be alert, and any time that he tapes up that system or renders it inoperative, he is inviting a catastrophe. He has to be in full control of his faculties, and it is inconceivable to me that an engineer could safety operate a train with any drug or alcohol impairment.

Working with labor, the rail industry, government and public interest groups, we need to develop an effective drug program, and we have to provide the public with the degree of safety it deserves and certainly has a right to expect. This program should include face-to-face check-ins as much as possible.

Now, it may strike you as odd, as it did me, that people can come to work and not be seen by a supervisor when, in fact, that is considered one of the steps to prevent people who are under the influence of alcohol or drugs from going to work. This system might be costly to implement, and it could impose hardships on already tight budgets, but I have asked Secretary Dole to look at the issue to see if random spot checks might be possible. If it could be done, we could deter crews from coming to work under the influence.

Secondly, the Federal Rail Administration should aggressively enforce subpart E of the rule pertaining to the identification of troubled employees. Carriers should be required to establish referral and rehabilitation programs, and the FRA should insure that those programs are put into place. Any new drug testing program should include an amnesty period to encourage employees to confront their problems, to come forth and get treatment. After that amnesty program, enforcement has to be strict and punitive. We cannot afford to wait for accidents to happen. We have to solve the problem now, not later.

A drug program is not all we need. We need automatic train controls. It is painfully clear that if the Conrail engine had had the ATC, the January 4 accident could have been averted. The National Transportation Safety Board has recommended ATCs, automatic train controls, on the Northeast Corridor since the early 1970s. That recommendation ought to be adopted.

A third point is the dual use of the Northeast Corridor trackage. We mix high speed passenger trains and slower freight service on the same lines. The mix is a risky one. I have asked the Secretary to work with Amtrak and Conrail to remove as much freight traffic as possible from passenger track and to confine freight traffic as much as possible to off-peak hours.

Fourth, we need to strengthen compliance with predeparture tests and inspections. Before a plane leaves the ground, the FAA requires that several people, including the operating crew, confirm that it is airworthy. That does not happen on railroads. The operating crew is not responsible for a safety check, and it ought to be. These inspections should be made only by qualified personnel. Our hearing showed that that does not always happen.

Fifth, we need minimum Federal standards for train operators. Today, there are none. Pilots need a license issued by the FAA. Truck drivers need a license. Cab drivers need a license. Engineers should be no different. The demands placed upon engineers are for-

midable. There should be uniform minimum Federal standards that tell us that an engineer is qualified to run a train. There should be periodic examinations to maintain these standards.

Sixth, Mr. Chairman, it is imperative that all trains have operable train-to-train, train-to-station radios. It is hard to believe that with today's advanced communication network this is not the case. Although a radio may not have been able to prevent the recent tragedy, it could be vital in averting similar accidents. The NTSB has recommended that operable radios be in all trains, and that recommendation ought to be acted upon as quickly as possible.

Seventh, my subcommittee heard numerous tales of employees who reported safety violations to FRA inspectors and later were harassed by management. Many violations go unreported for fear of reprisal. In order to foster an atmosphere where safety is a primary concern, whistleblowers, and I use the word here in the appropriate context, must be encouraged and must be protected.

Next, event recorders can play an important role in tracing the cause of accidents. I have asked the Secretary to see if recorders should be required on all freight trains.

Finally, serious questions have been raised concerning FRA's enforcement practices. Not all safety detects are reported as violations. FRA, frankly, is too willing to settle violations out of court for far less than the prescribed penalties. This undermines the deterrent effect of penalties and makes enforcement less effective.

Following the accident, the FRA inspected many trains. Now, the accident took place on January 4. At our January 21, 1987 hearing, Mr. Riley, the head of the FRA, said ten warning whistles were found taped over, just like the one in the Conrail engine on January 4. This is a couple of weeks after the other accident. That is not a matter of inadequate maintenance. It is a matter of deliberate willful disarming of an important safety device. It raises serious questions as to how widespread safety violations are and how such a situation can exist.

I have asked Secretary Dole to review the Department's enforcement policies and the need to revise them, and I expect to hear from her in the coming weeks. In the meantime, I am drafting legislation that will address these issues, and I plan to introduce that bill shortly. I look forward, Mr. Chairman, to working with you and other members of the subcommittee in this area.

That concludes my testimony, and I thank you for providing me with this time. As Chairman of the Transportation Appropriations Subcommittee, I look forward to working with you and your subcommittee on these and other issues as well.

Senator EXON. Senator Lautenberg, thank you very much. It was a well-prepared statement. We have talked about this between the two of us on and off the floor. It is an area that we have to move on.

I have a question. We are not going to hold you up very long, and then we will move to, Ms. Collins. I shall just take a few moments, because Senator Lautenberg does have to go to the Budget Committee.

I am disappointed, frankly, that you did not exercise the prerogative which was yours in delaying him here. We serve on the Budget Committee together. If he gets there before I do, which he will with

this maneuver, he has priority over me in asking questions there all day. So you have keenly disappointed me, Representative Collins.

I will yield to my colleague, Senator Rockefeller, for questions of Senator Lautenberg at this time.

Senator ROCKEFELLER. I have no questions, Mr. Chairman. I would urge the Senator to quickly go over to the Budget Committee hearing. That establishes priority.

Senator EXON. Let me ask a question or two. We have addressed safety for many years in this committee. It is an ongoing problem. I have two questions.

I thought it was interesting that you brought up a point that I started out on, I guess, five or six years ago, and it has never been resolved to my satisfaction, and that is that when a train crew gets on a train and takes that train out of a station to go anywhere, it has been my perception that sometimes the crew members never see each other when they get on the train, during the train ride, or after they get off. It is like they are different people running different trains in different directions.

Somebody has to be in charge of that crew, and I think if we are talking about basic safety and the ability to do the job, then when you have two, three, four or five individuals, that whoever is in charge of that crew should look at them and at least make a visual inspection as to whether that person is ready to do a job.

Is it your feeling from what you have looked into on this particular terrible accident that the crews of neither train saw each other before they left on that fateful journey?

Senator LAUTENBERG. That I do not know, Mr. Chairman. I do know this and learned this in not only our hearings but also in subsequent review of what takes place in railroading. Many times, the train crews never come face to face with management or supervision.

Now, it is preposterous in some ways because part of the review process, part of the safety process, is supposed to be a face-to-face inspection to determine the condition of the crew members. To make certain that you can at least see if somebody is wobbling or crawling up the steps or what have you, as crude as that sounds. It does not take place, I am told, for all kinds of reasons. Some of them sound practical, but we still have to look at them. When a crew gets on a train at some distant place and swaps duties with the current crew, it is almost impossible to come face-to-face with management or supervision who may be some distance away. We ought to at least find out where it happens and how it happens.

Maybe there ought to be something as simple as a conversation over the radio, to say okay, Harry, what is going on, what have you seen or where have you been, or at least to know that there is not someone on there who is zonked out from either drugs or alcohol. It is preposterous to think that someone could get behind the engine of a train with maybe 100 cars hurdling through at 60 miles per hour and we don't know whether this person is physically capable of doing so.

Senator EXON. My last question has to do with a follow-up of some of the things you brought up in your testimony this morning, and that has to do with checking on individuals to see whether or

not they are taping over sound devices and other protective devices that we have built into our system.

If we have not even learned that we have to stop that kind of nonsense, maybe we have to go so far as to put such action in the form of a felony, which it is not presently, to bring some pressure to bear on these things.

Let us take the other point of view for just a moment. In your looking into this crash and the people you talked to and the investigation that you have done so far, did you get any indication, Senator Lautenberg, that, indeed, we should be listening to the unions from time to time with regard to their continued appeals for more people working a train to carry out safety issues that, of course, are of concern to the people who operate and run these trains?

Senator LAUTENBERG. Mr. Chairman, one of the things that we learned in the testimony before my subcommittee in a statement by a member of the engineers' union is that schedules are very tight, and that they are so pressured to meet deadlines. He cited a case in which an individual, an elderly man, was struck by a train.

I do not want to go into the goriest of details, but he reported that this body was on the front part, I do not think they call it a cow catcher anymore, but the front part of the railroad engine. According to him, he was ordered to proceed, get on with his schedule, carrying the remains, and to leave the police reports to the management.

Now, I do not know whether it is true. But I did learn some interesting things, Mr. Chairman, in a ride that I took on one train. It was a very interesting experience. If you think that you have had a thrill in an amusement park, get in a telephone booth-sized cab and start moving along at 60, 80, and 100 miles per hour through tunnels, et cetera, and you realize how bright and alert an engineer has to be.

One of the trains that I got on, not an Amtrak train, did not have the windshield cleaned on the brakeman side. Now, Mr. Chairman, I could not see through there. I was there with the President of Amtrak, who told me in front of that engineer that they do not permit that train to leave the station if that engine does not have its windshields cleaned. Here I was on another train where two of the three windshield panes of glass were so dirty I could not see out of them. I had to stand behind the engineer sitting in his little chair to make sure that I could see what was going on. I was not going to be able to influence the course, but I sure wanted to see what was coming.

It struck me as incredibly careless that that simple thing was not done, and I think very often crews are asked to go out under conditions that are less than inviting to a good safety procedure.

Senator EXON. Thank you. I have no further questions, and I know you want to get to your other meeting.

We'll recognize Representative Collins now, she's been so patient. After she's finished her statement, then I'll certainly recognize Senator Pressler, who has just come in, for any opening statement or questions that he has for you.

We're delighted to have you here, Representative Collins. Thank you for your patience.

STATEMENT OF HON. CARDISS COLLINS, U.S. REPRESENTATIVE FROM THE SEVENTH DISTRICT OF ILLINOIS

Ms. COLLINS. Thank you very much, Mr. Chairman, and members of the subcommittee. I want to thank you for providing me with this opportunity to discuss what I consider a very vital issue before the American public today: safety on the nation's rail system being compromised by engineers highballing down the tracks.

For a very long time, we have taken comfort in our ability to travel on trains and arrive at our destination safely. But the January 4th Amtrak crash destroyed my perception of how safe rail travel is today.

I can't help but wonder what was the cause of this accident. While it is still under investigation, it appears that drugs may have been a factor, because the Conrail engineer and brakeman were both quite possibly high on marijuana at the time of that accident. I wonder if this is an isolated case of an engineer operating a train while possibly under the influence of drugs or alcohol.

A few weeks before the Amtrak crash, two Philadelphia commuter trains collided on December 10th, injuring some 30 people. Again, drug tests revealed certain members of the trains' crews tested positive not only for marijuana, but cocaine, too.

Consider these findings from the National Transportation Safety Board. On September 28, 1982, an Illinois Central Gulf train carrying chlorine and other hazardous materials derailed neared Livingston, Louisiana because, in part, the engineer was drunk and abandoned the controls to an unauthorized person. This accident caused over $14 million in damages.

On April 13, 1984, two years later, two Burlington Northern trains collided head on near Wiggens, Colorado, because an engineer and fireman had been drinking and fell asleep. This accident caused $3.9 million in damages.

On April 22, 1984, a Burlington Northern train rear-ended another train near Newcastle, Wyoming, because the engineer was under the influence of marijuana, and both he and the brakeman were fatigued. This accident caused $1.36 million in damages.

On June 26, 1985, a Metro-Dade Transportation Administration test train rear-ended another one because the operator of the rear train was on drugs and failed to monitor the track ahead of him. These were brand-new trains which were damaged by this accident.

And finally, the NTSB is investigating a June 1986, Seaboard derailment in Alabama, where the engineer tested positive for cocaine seven hours after that accident.

I believe one way to prevent these accidents is to screen engineers to see if they are on the National Driver Register.

While I agree with everything that the previous witness said in the nine points that he brought to the attention of this subcommittee, I believe the one thing he overlooked, and one thing I think is very possible to implement, is to compare the National Driver Register, which provide a record of individual driving motor vehicles under the influence of alcohol and drugs with the record of whoever is operating these trains.

It seems to me that whenever a person has a record of driving under the influence, whether it's driving a car or operating a train,

the likelihood is that that sort of disposition to drive drunk is going to fall over into their everyday work habits.

On January 22, I chaired a House Government Operations Task Force investigation into the Amtrak crash. Because of the information I learned from that hearing, and my general concern for the public safety, I introduced legislation, H.R. 718.

The reason why I introduced this legislation is because the bill does a number of things that I think are important. First, it requires the Federal Railroad Administration to license railroad engineers. In addition, it provides the FRA with access to the National Driver Register that I just talked about. It also gives FRA the authority to deny an engineer's license if someone has been convicted of driving under the influence of alcohol or drugs, or any other serious driving offenses.

H.R. 718 does a number of other things. It directs the Federal Railroad Administration to establish a system for licensing engineers, to ensure that each licensed individual has sufficient knowledge of appropriate safety, right of way, signalling, equipment, and operational factors, and so forth, to operate a train. In addition, the issuance of a license would convey the authority to suspend or revoke a license for continued safety violations at work, or for having one's driver's license revoked or suspended while driving under the influence.

The need to license rail engineers is self-evident, I believe. Motorists, truckers, airline pilots, and commercial maritimers are all currently subject to licensing requirements. Indeed, rail engineers are the only operators of public transportation modes whose skills and knowledge are not tested and attested to by a government body.

Until recently, rail engineers learned their trade, I'm told, through a lengthy apprenticeship as a fireman. But today, that extensive on-the-job training has been partially or mostly eliminated with the phase-out of firemen.

Today's newly hired engineer, rather than learning his or her job in a cab as an apprentice, goes through a railroad-sponsored training program which, to save money, is typically short of actual train operating experience. More seriously, these training programs are not monitored by the Department of Transportation.

Equally important, H.R. 718 would give the FRA access to the Register that I talked about previously. If an individual's name appears on that Register, the agency would have the discretion to deny or revoke a license, depending on whether the person has been driving while impaired or committing other serious driving offenses.

Although the proposition has not been tested scientifically, common sense suggests that a train engineer who drives a car while impaired may be prone to similar irresponsible behavior when he is at the throttle of a train, posing a direct threat to the safety of hundreds or thousands of people.

I think we need only look at the driving record of the Conrail engineer in the Amtrak crash to support this. He had a longstanding history of committing serious driving offenses, and was recently arrested for drunk driving. Now, I question whether Conrail would have hired this individual if they had had any awareness of his previous driving record.

In terms of rail safety, H.R. 718 would operate as follows.

Within 60 days of enactment, the Secretary of Transportation would issue regulations to establish procedures for licensing train operators based on their operating skills and knowledge. A year after such regulations are issued, all engineers would have to be licensed.

In issuing such licenses, the Federal Railroad Administration would take the additional step of consulting the Register I talked about. The DOT maintained register includes the names of all individuals who have had their state driver's license revoked or suspended.

Under current law, that information may be obtained and used for purposes only of issuing a driver's license. However, I think this legislation would open that door by making available to the Federal Railroad Administration any necessary information they need to license engineers.

I believe that H.R. 718 stands for the proposition, therefore, that those who drive while impaired cannot be trusted to operate a train.

It recognizes that irresponsible behavior on the highway is a likely predictor of irresponsibility at work. Public safety demands that those who have flaunted public safety while behind the wheel should not be entrusted with the privilege of operating rail equipment.

In closing, Mr. Chairman, I wish to commend you and your subcommittee for moving so quickly on exploring ways to improve rail safety. While we cannot undo the death, injury and destruction of January 4th, perhaps together, we in Congress can lessen significantly the potential for major rail accidents occurring in the future.

Thank you.

Senator EXON. Thank you very much. That was a good statement, and I think you brought out some especially important points with regard to your legislation, and I was thinking along the same lines.

I was thinking though, Representative Collins, that so oftentimes after something like this happens, we zero in on some things that should be done.

Here was supposedly an engineer, railroad employees, who didn't do their job. That all remains to be proven yet, but that is at least what has come out of the early information that we have.

And so we move along the lines, correctly, as I think you suggest, to have some relationship between what is their habits while driving an automobile.

If what you say is good for engineers, would it not also be good for bus drivers, for truck drivers, for airplane drivers?

Ms. COLLINS. Absolutely.

Senator EXON. Mightn't it be a good idea if we try to broaden this thing out?

And of course, I don't know about the House of Representatives, but at least over here, this particular subcommittee and our commerce committee has I think pretty overall jurisdiction over legislation in this area.

And so what I'm trying to bring about with this hearing, and probably the hearing on Friday, to try to expand this whole proposition.

If something is good for the goose, it's probably good for the gander. And if we're talking about overall public safety, we'd better look beyond railroads.

Would you agree?

Ms. COLLINS. I would certainly agree with that. Let me hasten to say, Mr. Chairman, that my legislation is not as broad as you've mentioned, although perhaps it should be. But we have included the same kind of use of the National Driver Register for certificates for pilots because we don't want pilots flying high either.

Senator EXON. Thank you.

I will now recognize the ranking member of the subcommittee, Senator Kasten.

Senator KASTEN. Mr. Chairman, thank you very much.

And first of all, I want to say welcome to Cardiss Collins. Just as a personal note, when I served in the House of Representatives, she and I served on a subcommittee of the Government Operations Committee together, and I have a high regard for her.

We've worked closely on a number of issues affecting Illinois and Wisconsin.

But most importantly, I just wanted to say a personal welcome.

And I also have had an opportunity to review your legislation, and I think it makes a lot of sense. And I think possibly you in the House, and some of us in the Senate, could work toward some of the goals that you've outlined in your testimony.

So I just wanted to say welcome, and it's great to see you.

Ms. COLLINS. Thank you very much.

Senator KASTEN. Recent events, including the Conrail-Amtrak accident in Maryland, and also a derailment in October just outside of Fall River, Wisconsin, make this an appropriate time for our hearing on rail safety.

The subject is of great importance to the travelling public. The recent hearings before the transportation appropriations subcommittee, and the hearings scheduled for this Friday before the full Committee, evidence the concern of Congress in many areas that affect the safety of our rail system.

As with all issues that concern matters as complex as our rail system, there are no miraculous or easy answers. But I believe that the members of this committee and the American people want to be sure that those charged with the safety of the system are trying to work with one another toward solutions, not just pointing fingers at one another.

I'm pleased that among our witnesses we have those that can make a difference.

The representatives of labor have got to understand the concerns which prompt proposals of mandatory drug and alcohol testing.

The FRA and the railroads should tighten up controls so that post-accident testing, which is mandated now, is in fact performed.

Issues such as luggage and equipment restraints have got to be resolved. And of course major questions regarding traffic routing and safety equipment use, maintenance and installation, cannot be solved in an atmosphere of delay and postponed investigations.

I hope, Mr. Chairman, that these hearings move us closer to the safest rail system that reason and a concern for safety can assure for the American public.

And as a new member of this committee, and as ranking member of this committee, I look forward to working with you.

Senator EXON. Thank you very much, Senator Kasten.

Senator Rockefeller.

Senator ROCKEFELLER. Representative Collins, I was struck by the litany of examples you laid forth where drugs, alcohol, et cetera, were involved.

Our witnesses so far this morning have been very, very careful to use the words, appear to, or perhaps, have been involved, in terms of the recent tragedy.

But then when it comes down to your suggestions, it seems to me that you rather carefully walk around doing anything about what you've just described in a very careful litany.

License railroad engineers; that's fine. National Driver Registration, that's bold.

Denying an engineer's license or airman's certificate if somebody has been convicted of driving under the influence of alcohol. That is, I presume you mean, driving a car.

Ms. COLLINS. Yes.

Senator ROCKEFELLER. Well, what if someone has not been convicted of driving a car under the influence, but has driven a train under the influence?

Ms. COLLINS. Well, unfortunately the National Drivers Register does not include that information.

Senator ROCKEFELLER. So what would you do about that?

Ms. COLLINS. I believe that the part that we have in the bill about the FRA determining whether or not a license should be issued would probably take into consideration that issue as well.

On the issue of drug abuse, let me say, one of the reasons why my legislation avoids testing is simply because during a hearing that we had on January 22nd, as chairman of the task force, a number of questions were asked about whether or not there should be a random sampling.

I was struck by the fact that the head of Amtrak thought it would be a good idea, and that it could certainly be done in a very positive manner. However, there were a number of other groups who had not yet given thought to testing.

I was struck, too, by the fact that the more we look at this, the more information we get that random drug testing might not be as accurate as we think it should be.

I believe that until these questions have been answered to my satisfaction, that that's an area we're treading into an extremely dangerous area.

I have some concerns about random testing at this point in time.

Senator ROCKEFELLER. But you have a concern about it, but you also have a tremendous concern in that the whole first part of your testimony is based on four examples where drugs or alcohol were involved.

Ms. COLLINS. That's correct.

Senator ROCKEFELLER. So you obviously have a real concern about that, too.

Ms. COLLINS. Of course.

Senator ROCKEFELLER. I'm just curious. I understand that all of this is being taken to court by the rail unions, and I understand that, and I understand the politics of that.

But it just seems to me that if you're going to lay down a gauntlet based on drugs and alcohol and then come back and say, well, if they've driven a car and been arrested, then they shouldn't get their license. But then on the other hand, random testing could be too dangerous, or you're not sure about that, I wonder how deep the bill's going to be.

Do you think it's possible to do testing in some form which could meet constitutional requirements? Have you looked at that at all? Are you worried about that?

Ms. COLLINS. I'm sure that it could meet constitutional concerns. However, I'm more concerned about the medical concerns.

We have received information on our subcommittee—and I'm talking about the Subcommittee on Government Activities and Transportation in the House, which I chair—that, in many instances, testing which has been done is not accurate. Now, if this is not accurate, it's of no use whatsoever.

Senator ROCKEFELLER. Well, what if somebody's driven a car five years before and did it under the influence of alcohol; therefore, they can't become engineers, or don't get their license, or get their license taken away; that's not exactly immediate accuracy either, is it?

In other words, if your purpose is to make it accurate and conclusive, then you have to come up with something better, it would seem to me, than somebody driving DWI in an automobile.

Ms. COLLINS. I still believe, however, Senator, that if a person has been driving habitually under the influence, I don't want that person sitting in the cab that is sending me to my destination.

I don't want that person flying an airplane that's carrying me.

I don't want that person operating an Amtrak train that I might be taking.

I don't want him driving a city bus that I might be taking.

Because, as I've already said, if in fact he has a habit of doing this, then he's likely to carry the same thing over to his work.

Senator ROCKEFELLER. What if it's not habitual?

Ms. COLLINS. If it is not habitual, it wouldn't show up on the National Drivers Register. If he had one incident five years before he's requesting to be licensed, I'm sure that would be overlooked as a one-time incident.

However, if he had a record of maybe driving impaired five times in those five years, I would certainly want to look at him before I licensed him to drive anything, including an automobile.

Senator ROCKEFELLER. Thank you, Mr. Chairman.

Senator EXON. Senator Danforth.

Senator DANFORTH. Mr. Chairman, thank you very much for holding the hearings.

My view, Mr. Chairman, is that mandatory random testing is the sine qua non of dealing with the drug issue.

And I would hope that we would be marking up a bill in the near future.

Senator EXON. Thank you very much.

Senator Pressler.

Senator PRESSLER. Thank you very much, Mr. Chairman, and thank you for holding these hearings. I think they are very important.

And also, Congresswoman Collins, I welcome you here, having served with you in the House also.

Let me say that I am one who is very near a decision to support random testing for drugs and alcohol in some of our major transportation facilities, because I think it is so important to safety.

Also, I think freight train safety is an important concern to the people in the towns where freight trains move and so forth.

I did read an interesting statement this morning by a person who is not a witness, Richard A. Giest, who is a state representative, but who is with the High Speed Rail Association.

He points out that in Japan and France's high speed trains have not had accidents; that high speed has not been a problem. And compares some of the European and Japanese trains, and their safety records.

And I would like to submit that for the record.

Senator EXON. Without objection.

Senator PRESSLER. Let me conclude by saying that I think that if we really want to pass a bill that has teeth in it, we're going to have to deal with this alcohol and drug thing in a more comprehensive way.

That's the real guts of the issue we're talking about. I very much appreciate Ms. Collins pointing out about luggage being loose, and that is a great danger, and we should solve that, and we can legislate that.

There are other problems about clean windshields and so forth that are problems that need to be solved.

But when we get down the basic issue here, what we're really talking about, is whether we are willing to go into the area of random drug and alcohol testing that is really the very essence of what we're facing.

If we back away from that question, then we're backing away from the whole issue that is before us.

Thank you, Mr. Chairman.

Senator EXON. Thank you, Representative Collins. We appreciate very much you're coming over and taking the time to give us your important testimony.

Ms. COLLINS. Thank you, Mr. Chairman.

Senator EXON. We will now call the next witness, the Honorable John Riley, Administrator of the Federal Railroad Administration.

Mr. Riley, if you would come forth at this time.

At this time, I'd also like to have the record held open for up to 48 hours so that any other member of the subcommittee or committee that wishes to make a statement as a part of these proceedings may do so.

Senator PRESSLER. Mr. Chairman, I want to say, I have to run back and forth between the Environment and Public Works Committee and here, we have the budget for the Fish and Wildlife Service up which is very important in parts of my state. So I'll be coming and going.

Senator EXON. Represent me also on that. I feel the same way as you do, Senator Pressler.

Welcome to you, John Riley, Administrator of the Federal Railroad Administration.

STATEMENT OF HON. JOHN RILEY, ADMINISTRATOR, FEDERAL RAILROAD ADMINISTRATION, DEPARTMENT OF TRANSPORTATION, ACCOMPANIED BY JOSEPH WALSH; MARK LINDSEY; AND PHILLIP OLEKSZYK

Mr. RILEY. Thank you. Let me, before I begin my testimony, just make two introductions. On my left, Joe Walsh, former officer with the Signalman's Union, who is now the head of safety at FRA. On my right is Mark Lindsey, who is our Acting Chief Counsel. And on my extreme right is Phil Olekszyk, who has become our answer to Vanna White when it comes to charts.

Phil is Joe Walsh's deputy in safety. And let me say in overview that one, I want to very strongly associate myself with the comments that you have made and that Senator Danforth has made on random drug testing and I will be glad to take any questions on that, and I can tell you from being out on the front lines we need that. The second point that I want to make is that we will go in overview today from some areas of progress to some areas of challenge. It has been two years since I last came before this Committee on safety issues, and in those 24 months we have really made some remarkable history in the railroad industry. 1985 by any standard and in every category was the safest year in the history of the railroad industry.

The preliminary data we have for 1986 suggests we are going to exceed the 1985 numbers by double digit margins in just about every category. The chart that is over on my right that I cannot see gives those numbers to the Committee and I think pretty much tells the story. On raw accident numbers we have been able to cut those numbers by 30 percent in the two years since I was last before this Committee.

Accident rates, which is a little more accurate indicator, is down 27 percent. Track and equipment-related accidents, the things you can catch with inspections—hardware accidents—are down 35 percent in two years. At a time when workplace injuries are increasing in so many American industries, we have cut them by 31 percent in the last 24 months. Grade crossing accidents are down a little over 10 percent, and fatalities in train movements down 38 percent. I must tell the Committee they increased by three between 1985 and 1986.

Now, the extreme right column illustrates how far each of those numbers has come down in this decade, and those numbers range from 50 to about 75 percent. And Mr. Chairman, these are dramatic figures, and there is no other mode of transportation I know of that can match the railroad industry's improvement in safety numbers in this decade, and that improvement was not a matter of chance.

The major factor, unfortunately, I have to tell you, was not us. The major factor was a piece of legislation. The Staggers Act gave the industry the cash flow it had lacked for decades, and since the

adoption of that Act annual investment in track, roadbed, and structures has tripled in the railroad industry, and you can see the impact of that in the 76 percent improvement in track and equipment-related accidents.

I also do believe, though, Mr. Chairman, that an increasingly effective Federal regulatory program has played a role in this improvement. FRA has concluded more major regulatory actions in the last three years than we have in any comparable period in the agency's history. Our inspection force and the number of on-site inspections are both at an all-time high. In the 24 months since I was last here on safety, our inspectors, in addition to their on-site inspections, have completed four full assessments of major carriers and limited assessments of 44 others, and during the same time we have completed the alcohol and drug rule and a number of major rulemakings.

Now, the legislation that we will be submitting within the next couple of days for reauthorization of the Safety Act will enable us to maintain that effort over the next three years. It will support 379 field positions, 325 of whom are inspectors. The overall program level will increase $2.29 million from 1988 and be at about $4 million more than from the last program we recommended here two years ago. In addition, for the first time the industry will be asked to share in financial support of the safety program through a system of user fees.

Now, so much for the past. What can you expect from us in 1987? In 1987 FRA will conduct full system assessments of three railroads, Conrail, the Soo-Milwaukee, and a commuter carrier yet to be designated. We will in addition revisit SEPTA, to do a follow-up on the assessment that we did there last year.

Our regulatory efforts will be fourfold. First, both in timing and priority, we are midway in a broad-based proceeding on communications in the railroad industry that runs the gamut from radio communications to satellite technology and automatic train control.

Second, on the conclusion of that we will initiate a formal inquiry into safety issues stemming from the construction and equipping of the locomotive cab.

Third, we have established a team of senior inspectors headed by Frank Bridges of our Denver office to perform a ten-month analysis of railroad dispatching practices. We intend to consider every issue from workload to training to stress levels to operating practices, and we will then do a public proceeding on the dispatcher function at the conclusion of the accumulation of that data base.

Finally, and I have said this before, it is my intention to reexamine decisions made both by this agency and the NTSB in the 1970's and early eighties on the use of automatic train control by freight trains in the northeast corridor.

I want to emphasize strongly to the Committee that these regulatory priorities are not a matter of chance. We recognize that the resources available for safety investment in both the public and the private sector are finite and we recognize that our regulatory decisions have an enormous impact on where private railroad companies put those safety dollars. We are very much a cost-benefit industry, and to the extent that our regulatory decisions force the

companies to put those resources into the seventh, eighth, or ninth most productive priority instead of the first or second we hurt safety and we waste resources that are inherently finite.

Now, going beyond 1987 to the long term future, in those 1986 numbers, as good as they are, there is a challenge that is probably not apparent on the face of the numbers because as accident rates have fallen dramatically there has been a subtle shift in the causation of railroad accidents. Equipment-related accidents, such as track and signal failures have declined very sharply, more than 75 percent in this decade, but at the same time human performance accidents, while decreasing in absolute numbers, have become a much larger share of the overall mix of railroad accidents and a dominant cause of the truly serious accidents.

Human factor accidents are invariably more serious than equipment accidents by their nature, and I am afraid that we are now past the era where we can produce dramatic improvements like this in safety just by investing some dollars in deferred maintenance or doing a few more track inspections. If we are going to keep the accident rate going down, we have got to attack the complex issues that arise from human performance accidents, and we are going to need the help of this Committee to do that.

Most people are shocked to learn that under present law FRA's enforcement authority extends only to railroad companies. I think, Mr. Chairman, I ate up some of my time with introductions.

Senator EXON. Go right ahead.

Mr. RILEY. FRA's enforcement authority extends only to railroad companies. We do not have the same enforcement authority over the people who actually run the trains, and that is a real world barrier in dealing with the problem of human factor accidents. The legislation we will be submitting this week to the Committee will give us the same enforcement authority over individuals that we have over institutions, and believe that the arguments for that are compelling. Safety is a shared responsibility between management and labor, between individuals and institutions, and an Act that covers only half of that equation is inherently going to be only half effective.

I really personally believe that accountability has got to go beyond amorphous corporate entities to the individuals in management and labor who actually run the railroads, just as it does in the hazardous material Acts and under FAA's legislation. Where we have the power to regulate in areas like track we have been able to produce dramatic improvements in accident ratios. I believe we can do the same thing in the human factor area if we can get the authority to act.

Now, Mr. Chairman, you know well that we have tried to reach employee conduct through the back door in rules like the alcohol and drug rule by requiring the companies to do things to their employees. Now, whether that rule will stand up in court remains to be seen. We have been there for 18 months. But this is at best a back door Rube Goldberg way to try to reach the heart of the problem, and the defect in it is that it leaves us entirely dependent on the willingness and ability of railroad companies to take actions against offenders. We cannot do it ourselves. And that ability is often restrained by complex and time-consuming grievance process-

es. FAA has made very effective use of its authority to suspend certification of aviation personnel where the circumstances justify, and the mere existence of that authority is a deterrent. We lack the authority, we lack the deterrent, and its absence is a serious problem. I will give you two examples of where that absence hurts us in the real world.

There has been a lot of talk about licensing this morning, but the fact that we lack the legislative authority to suspend anybody's license was an absolute barrier to pursuing that, even should we decide that is the best way to go. More immediate, however, is that this gap in our authority stands as a serious obstacle to addressing what I personally believe is the most serious safety problem we are now confronting in this industry other than alcohol and drugs, and that is the tampering and disabling of safety devices by operating employees.

I spent several days at Chase, Maryland, and in that accident we discovered a basic warning device designed to ensure crew attention in a stopping emergency had been taped and tampered with, intentionally disabled, and it is not an isolated incident. Since we began to look nationwide for repetitions of this in late January, we have been finding literally a case a day in which we are apprehending a locomotive with its safety devices having been tampered with and shut off.

And it is not just a problem in the USA. Last week the Canadian commission of inquiry on the Hinton accident, which you will recall was so tragic in Canada last year, issued its report, and concluded that the disabling of the train's automatic stopping device was a likely contributing cause to that accident.

Now, given the ease with which this tampering can be concealed, I think we may have only discovered a small percentage of what is actually going on out there, and let me conclude by saying this is an extremely serious problem. The best safety devices that we can design are going to have very little impact if they are disabled by the very people they are designed to protect. Our ability to deal with this is severely hampered by our lack of authority over indivduals. We have literally caught two engineers red-handed tampering with locomotives in the last month. We could not do a thing to them other than to turn them over to the company and hope that normal grievance procedures work. I think we need a stronger deterrent than that, Mr. Chairman.

Now, there are two other proposals I will make you aware of in our legislation since it is not here this morning, although we expect to have it up to you this week. We have not reviewed our maximum civil citation ceiling since 1970, and inflation has substantially eroded the $2,500 per count ceiling. We are going to propose that that be raised to $10,000 per count. In addition, I am going to ask the Committee for the same kind of punitive assessment authority that exists in the Hazardous Material Act at the same amount so that for a case of flagrant violation of Federal Acts or repeated violation and failure to respond I can assess a $25,000 penalty against a company. Frankly, I have to tell you that I have seen almost no examples of that, but I think it is a power that you ought to have, and so we are asking the Committee for it.

Thank you, Mr. Chairman, and I particularly want to thank this Committee and Senator Danforth and Senator Hollings, who have been in the positions of chairman and ranking member in the past, for the strong support they have given us in our effort to keep the safety bill clear of nonsafety amendments in past years.

Thank you.

Senator EXON. Thank you, Mr. Riley. We will go to the five-minute rule for the first round of questions. Let me first say you pointed out the need in your view for additional authority for your administration over the unions.

Mr. RILEY. Management and labor.

Senator EXON. You have pointed out also that you have discovered discrepancies since the tragedy with Amtrak where warning devices have been taped over or misused in some fashion. You point out that you have no authority over that. It is true, is it not, that the railroads have some authority in that area?

Mr. RILEY. Yes, they do, Mr. Chairman.

Senator EXON. I would first ask you, do you think that the railroads, who do have some authority, even if you do not, have been as forthcoming as they should have been in this area? Do they share some of the responsibility then for what happened or did not happen with regard to that tragic accident involving Amtrak?

Mr. RILEY. As a general principle, Mr. Chairman, I think they do, and as a matter of fact I do have the right to cite a company, not an individual, for this, and we have in fact issued, I believe the number is 18 citations this month. Now, the purpose of issuing a citation against the company is to ensure that the company is doing everything within its power to discover and stop this. But I think we also——

Senator EXON. Do you think they have?

Mr. RILEY. I think in the past they have not. I think they have a new awareness of the problem today, but to be very honest about it, a year ago I would have told you that I did not think the problem was extensive either. I think the Chase accident opened all of our eyes to this. It is very difficult to catch someone tampering. It takes a tenth of a second to remove tape from a whistle or to turn an angle cock to turn back on a stopping device. We are not only catching the people who are irresponsible, we are only catching the ones who are both irresponsible and stupid, is the problem.

Senator EXON. One last question. You have indicated some rather significant improvements in 1985 and 1986 with regard to safety, and I compliment you for that for whatever role you and others played. You said that the Staggers Act you think was the main reason that we have made these strides. You know, when I hear those kind of statistics, though, Mr. Riley, I think about the marvelous year that we had last year in aviation safety, and yet at the same time we had that marvelous year in aviation safety all of the information that we are getting in the Aviation Subcommittee, which is another subcommittee of this Commerce Committee, is that we had more near misses last year than we ever had before, so, you know, lady luck plays a factor in all of this, and I think we should keep that in mind.

You indicated some rather dramatic improvements, and yet what is your answer to what I understand that the rail labor unions will

testify to today, that while this record that you cite has taken place there has been a 108 percent increase in the number of injuries in train incidents and injuries in all types of accidents increased, increased from 577 to 1,027? How do you respond to this, or is it just the way different people look at different statistics?

Mr. RILEY. Mr. Chairman, not having had the ability to see their numbers, I would want to be able to file a supplement to what I am about to say in writing when I have seen them, but I make these comments on both the points you have made. Vis-a-vis air safety, I think the best thing that could be said about railroad safety is that our improvement in safety numbers is not a one-year phenomenon, it is a trend that has been going on since 1979. It is a consistent trend.

As to numbers, the number of workplace injuries in this industry has declined 31 percent in the last two years and by a much larger percentage in this decade. Injuries have declined. The only statistic—every statistic has declined dramatically in the decade. The only statistic that did not decline between 1985 and 1986 was employee fatalities. It went up by three. And that is a consequence of the increasing presence of human factor accidents, which tend to be more severe because by definition the human being is not the failsafe to equipment failure.

Senator EXON. Senator Kasten.

Senator KASTEN. Mr. Chairman, thank you very much.

John, I would like to just pursue this enforcement authority question a little bit more. It is my understanding that you have enforcement authority against companies or manufacturers or let me just go back to one of these switches, or the whistle, or whatever. If the whistle is manufactured in a defective way in that it does not perform as it should as an emergency device, you right now have the ability and the authority to go back to that manufacturer and penalize the manfacturer because the device did not perform as specified. Is that correct?

Mr. RILEY. I cannot penalize the manufacturer, but I can penalize the company, because it is the obligation of the company to ensure that the equipment it purchases is effective equipment and is in working condition. Our rule specifically requires the company to assure that.

Senator KASTEN. This is which company?

Mr. RILEY. The railroad company.

Senator KASTEN. The railroad company. All right. Now, the exact same thing happens except that the device now is disabled or is unable to perform because of an act by an employee. Someone knowingly, because he does not like the sound in the back of his ear or whatever it might be, disables the device, exactly the same circumstance except it is no longer the company, now it is someone, an employee who disables the device, and it does not perform. At that point what authority do you have?

Mr. RILEY. I have no authority over the individual. I can cite the company for operating a train with a disabled safety device, but since this is obviously a case where the employee tampering with it is going to do everything he can to conceal it from the company, that is not a fully adequate remedy, and I want to show the Senator a photograph that was sent to me last night. This was literally

taken by an FRA inspector in the cab of a Union Pacific locomotive who caught redhanded an engineer disabling a safety device, and we can do absolutely nothing to that engineer. We are a prisoner of the grievance process, and it takes up to three years to do a grievance in this industry.

Senator KASTEN. Now, to me that seems just absolutley outrageous that we are sitting here knowing that different safety devices are being disabled, are intentionally being disabled and you, we, no one can do anything about it. Now, in exactly the same circumstance the FAA—let us say that we went through this with the FAA. They do have the authority. Is that correct?

Mr. RILEY. They could suspend the operating certificate of the employee immediately.

Senator KASTEN. And in other areas you mentioned hazardous materials and other kinds of things. Could you explain what authority the government agencies have in those areas?

Mr. RILEY. The Hazardous Material Transportation Act gives the administrator the same authority over individuals as they have over companies to a very large extent. It does not encompass suspension authority. It is fine authority. But I really believe that—I do not know what you gain by fining. I think you have got to have some suspension authority here.

Senator KASTEN. Well, it would seem to me that we ought to have very strong support in this Committee to give you the authority that you are seeking not an authority greater than the FAA or greater than the hazardous materials people, but the same authority, because what you have described before the Committee is a rash of intentional acts which are disabling safety devices which are clearly, if not creating accidents, working along the trend that the Chairman just talked about. The numbers look good, but if we are sitting here with whistles being disabled, with braking devices or retarding devices, whatever they may be, could you—I do not know how much time I am going to have, but could you just briefly describe to us the kind of safety equipment that is being disabled? We have got the whistle.

Mr. RILEY. I will submit to the Committee a list of everything we found and every place we found it on. What is being disabled runs the gamut from the alerting whistles, which are very critical, because that is the principal device---

Senator KASTEN. And they are disabled by a piece of tape being---

Mr. RILEY. I think we have one that we can show you. They are disabled by a piece—this is literally one we took that was diasbled in practice and we took it out of a locomotive. This is the real thing. What they did in this case was to stuff tape down into the nozzle of the whistle and then put another piece of tape right across the front of the whistle like this so it could not sound.

We have also discovered automatic train stopping devices turned off simply by turning the air pressure valve that cuts them off and cuts them back on. It is also very common to find automatic stopping deadman controls disabled. That is what the picture I am circulating shows. It is easy to disable.

Now, clearly, Mr. Chairman, we have to do everything we can to make these devices more tamperproof. That is very important, and

I think the ultimate solution to this is for the peer pressure in the working environment for employees to say to fellow employees do not tamper with my life, I will not tamper with yours, that is the ultimate answer. Again, bear in mind that our inspectors in the field are not the deterrent they could be to this because they cannot suspend anybody if they catch them.

[The following information was subsequently received for the record:]

VIOLATIONS FOUND JAN. 29, 1987–FEB. 12, 1987

Railroad	Type violation	Explanation	Civil penalty
DRGW, ATK 244, Train No. 6, Jan. 29, 1987	Alerter, Denver, CO	On an inbound train the alerter was found cutout and the seal broken. The alerter is an electronic audible alarm and light.	(1)
ATK, 237, Train No. 3, Jan. 29, 1987	Alerter, Los Angeles, CA	In-service-alerter cutout. The circuit breaker to the alerter control box and the alerter magnet valve were inoperative. The circuit breaker was in the open position and the air cock to the magnet valve was cut out. The warning device was a light and audible alarm.	(1)
ICG V, ATK 371, Jan. 29, 1987	Cab signal failure en route, Effingham, IL	Excessive speed. The automatic train stop was cutout by the engineer en route and train proceeded at 90 mph. Federal regulations require that train speed may not exceed 79 mph under these circumstances.	(1)
UP, ATK 391	Alerter and overspeed, Kansas City, MO	The alerter valve located on the air brake equipment rack and the overspeed control valves were cutout. The alerter is a light and an electronic audible alarm and the warning device for the overspeed is a light and a whistle.	(1)
UP, 3334	Dead man pedal, Alexandria, LA	Various means were being used to hold the dead man pedal in a down position. These included the weight of a wrench, brake shoes, wooden and metal flag staffs. This nullifies the automatic brake application feature of this device. UP locomotives are not equipped with an alerter light or whistle. However, a penalty brake application is indicated by the venting of air.	(1)
UP, 3632	Dead man pedal, E. St. Louis, IL	do	(1)
UP, MP 5042	Dead man pedal, North Little Rock, AR	do	(1)
UP, 3474	Dead man pedal, Texarkana, AR	do	(1)
UP, 3419	Dead man pedal, Kansas City, KS	do	(1)
CR, 6622, 6005, 6013	Cab signal, audible device, Selkirk, NY	The air whistle was not clearly audible throughout the cab under all operating conditions. The whistles were found to be silenced by various methods such as tape across the orifice and the whistle filled with foreign material.	(1)
CR, 3331	Cab signal, Baltimore, MD	do	(1)
CR, 5044	Cab signal, Chase, MD, involved in ATK accident	do	(1)
ATK, 214	Alerter, Los Angeles, CA	The alerter device was cutout evidenced by observing that the circuit breaker was in the open position. When functioning the alerter provides a light and an electronic sound.	(1)

VIOLATIONS FOUND JAN. 29, 1987–FEB. 12, 1987—Continued

Railroad	Type violation	Explanation	Civil penalty
MKT, 244	Dead man pedal, Tulsa, OK	A cast iron brake shoe was being used to hold the dead man pedal down on a locomotive being used in yard service. This nullified both the air whistle alerter and automatic brake application feature of this device.	(1)
NJT, 5144	Train control, New Brunswick, NJ	The switch controlling the automatic train control was not sealed as required. If this switch is thrown it nullifies the automatic safety functions of the train control system.	(1)
DH, 356	Cab signal, ACS, Baltimore, MD	The cab signal air whistle, similar to those used by Conrail, was silenced by cardboard wrapped around the whistle and held in place by a piece of wire.	(1)

[1] General condition to be assessed $250 to $2,500.
ATK—Amtrak, CR—Conrail, DRGW—Denver and Rio Grande Western Railroad, DH—Delaware and Hudson Railroad, ICG—Illinois Central Gulf Railroad, MKT—Missouri Kansas Texas Railroad, NJT—New Jersey Transit, UP—Union Pacific Railroad.

Senator KASTEN. We have to give you the authority to move forward in terms of being able to enforce these kinds of actions just exactly the way I believe the FAA has.

I think the other point is maybe more important, and that is the atmosphere. I mean, can you imagine in an airplane if all of a sudden the co-pilot or the pilot decided they were going to disable the device that would set off the warning if they were going to stall and everybody says, well, it is not convenient to have this, we will disable this device? I just cannot imagine that happening in an airplane, but evidently it is happening every single day in a locomotive cab.

Mr. RILEY. Mr. Chairman, it is a funny thing. People disable seat belts. How many times have you seen people take the environmental devices off a car? This seems to be something that is a larger scale version of what people do in their private lives except that when you are running public transportation, it is a privilege, not a right. You take so many people's lives into your own hand.

I have been administrator now for three-plus years, longer than anyone has ever been, and even if the committee passes this I doubt that I will ever get to use this authority, but I think that my successor, be he or she a Republican or a Democrat, ought to have that authority. It is simply half a program if you do not have it.

Senator KASTEN. Thank you, Mr. Chairman.

Senator EXON. Thank you, Senator Kasten. I am going to recognize Senator Rockefeller now, but before I do that I just want to say once again that I am going to take a look, and maybe your fine organization needs some additional tools in this area, but let us not just slip over this thing. There is a mechanism now where your inspectors find something wrong. They can tell the railroad, and it is up to the railroad management to take action.

Mr. RILEY. That is right.

Senator EXON. I want to lay it out again. Evidently the railroad action has not been as forthcoming as you would have liked to have had it, Mr. Riley; is that right?

Mr. RILEY. I agree with you, Mr. Chairman. If I might respond to that, I thoroughly agree with what you are saying, and I do not

want to be interpreted as differing with it. The point I am making is that when we have to turn these actions over to the companies for enforcement, I fine every one of these companies to make sure that they are doing everything they can do, but we still are delegating our primary responsibility to insure safety in the railroads to private companies.

You know, the grievance procedures in this industry are very, very long and drawn out. I just believe that the public does not sit at those bargaining tables where those grievance procedures are agreed on. Anything we do is going to be subject to due process. We are not going to act unfairly or precipitously, but what we are trying to do is create deterrence. That is what we need in alcohol and drug, and that is what we need in tampering. There are unusual circumstances.

Senator EXON. Senator Rockefeller.

Senator ROCKFELLER. Mr. Chairman, everybody is talking these days about the need for a more competitive America, and one of the tenets of all of that is that there has to be a way in this country that labor and management, both with historic antagonisms and deep-rooted traditions of battling across the bargain tables, do better and that they somehow learn to cooperate.

It is one thing if you are talking about making toys or something else. If you are talking about public safety on railroads, in some ways public rights of way granted under the authority of public bodies, this type of cooperation ought to take place.

Now, you have passed around a couple of photographs, and you have put a lot of attention on what it is that labor is not doing or workers are not doing or tampering or things of that sort. The Chairman has said, well, what about the companies? What are they doing about it?

My question to you is what are they both doing about it? Labor is going to say that 10 percent of their membership is injured each and every year in this business. You are showing shocking and substantial tampering incidents. What, in your judgment, does labor do about it or what does management do about it? What could each of them do about it that you do not, as of this moment, have the authority yourself? If you did have the authority, then it would depend upon your own intensity, which I would judge to be very strong, but on the other hand you only have 300-plus inspectors, and I do not know what their case load is.

So let us just take the Federal government away for the moment and say what are labor and management doing about these things, as you see it.

Mr. RILEY. Good questions, and let me add an overview when I talk about authority over individuals and safety sensitive positions, I think there is an initial reaction that I must be talking only about labor. I am not. I am talking about individuals in safety sensitive positions, and it is a management and a labor problem jointly. You will notice that in the proposal we have we are not only requesting authority over individuals, we are also substantially increasing our ability to fine railroad companies.

So against that premise, one thing Jim Burnett said a few weeks ago which I really agreed with was that safety has been hampered by the degree to which it has become a part of the labor/manage-

ment struggle in the railroad industry. It has been, and that is unfortunate.

We can have all the authority in the world on tampering, Senator, but in the end it is the peer environment that addresses tampering and that addresses alcohol and drug use. Management has got to set an example, and management has got to go beyond what rules can do in creating awareness in the work place and places for an employee with a problem to do. That is what programs like Operation Redblock and voluntary programs are all about.

What we really need in this industry are labor/management committees that address safety. We have had quality circles in several companies, and I have funded a number of those. I think we need to carry that concept beyond the economics sphere into the safety sphere. I really believe that one of the reasons we have had so many legislative battles over the reauthorization of the Safety Act is that it applies to only one side of the equation and not the other, and it would work the same way in reverse if it applied only to labor and not to management, believe me.

Since we can only fine and cite companies, the employees have persistently tried to leverage the Safety Act back against the companies on economic issues. Companies would have done the same thing if the situation were reversed. I think by having a Safety Act that applies with enforcement authority on both ends of the equation, we can end a lot of that, and we can have a more balanced safety program.

Senator ROCKFELLER. So what is the answer to my question? What is labor and what is management doing about these tampering examples when they find them?

Mr. RILEY. Well, we have had two cases where we have caught individuals tampering, and they are the first two. To be honest with you, they have been too recent in the last week or two that I could tell you what is going to be done. I hope that the companies will pursue their full range of penalty options against the individuals, and I frankly hope that the labor organizations will stand forward and say we are against this, we do not support it.

I cabled every one of the labor organizations' presidents when we found the first one of these tampering incidents. I asked them to join with me, and I asked all the railroad presidents to join with me in saying that this is not acceptable, we are going to use every means at our disposal to stop it, and the first and most important means is moral leadership, saying that in our world, be it management or labor, this is not acceptable and we will not tolerate our fellow employees or fellow managers doing it.

Senator ROCKFELLER. Are all of these matters brought to grievance?

Mr. RILEY. They are not all brought to grievance, but I think that the grievance procedure hangs as a heavy cloud over these types of cases in the railroad industry. I found that out when we did our hearings on the alcohol and drug rule. Prior to the time that we authorized testing in the railroad environment, what regularly happened was that when there was a suspicion that an employee was violating the alcohol and drug rule without the power to test to prove it, if the manager acted there would be an immediate grievance filed. It then goes into a lengthy process. At the end

of every year, there are trades of grievance versus grievance, and that substantially undermined the deterrent value of it. That is what convinced me that we needed to have testing.

Senator ROCKFELLER. Mr. Chairman, I remember a number of years ago in the coal industry, almost every dispute at the face of a mine or anywhere was taken to what they called a temporary restraining order. Everything landed in the courts. Everything was done by grievance. Everything was done by confrontation, and therefore everything was in an atmosphere of this continuing hostility which in and of itself caused and led to many of the accidents, fits of hostility, et cetera, that we are talking about today.

The coal industry, although it is not known by most people, has virtually solved that. Temporary restraining orders have come to a virtual dead halt. Productivity, safety, cooperation at the face of the mine and the coal industry, which is usually considered to be and is the most dangerous industry in this country, have made enormous strides because labor and management decided to work together. Now, they do not always at the bargaining table, and they have some royal ones there, but at the work place they work together.

Without trying to get too philosophical about it, I think that kind of pressure needs to be brought on this industry. It is a traditional industry with traditional antipathies, with traditional antagonism, with traditional patterns of, if not hatred, hostility, and I think we pay a price for that. Now that is not in the form of a question to you. It is in the form of a statement.

I have seen the coal industry beginning to overcome it. I have seen the steel industry, again a classic hostile labor/management situation, beginning to overcome that through a variety of hard-won mechanisms. We may see that here, and I will be interested as labor and management testify later on, Mr. Chairman, in what they have to say.

Mr. RILEY. If I could just comment on that, I think that is absolutely on point. I think the industry has been hurt economically over the years by that. I think it has been hurt in its safety performance, and I think that the blame on it is very evenly divided. I am one of the few administrators that did not come from either management or labor, and I was just amazed at the depth to which historic perceptions govern the way people perceive one another today. Those shackles seem to be very hard to break.

Our industry is haunted by the ghosts of the 1920s, 1930s and 1940s on both sides. I wish I had an answer, Senator, on how to break that. I do not know how to break it, but it is a serious problem.

Senator EXON. Senator Danforth.

Senator DANFORTH. Mr. Riley, the FRA has promulgated a rule which provides for drug testing under certain circumstances including probable cause. You have said today that you support, in addition to the current rule, mandatory random drug testing.

Why is not probable cause testing adequate? If you have railroad personnel who are trained in what to look for, who are trained in identifying the symptoms of drug use, why would that not be adequate? Are there any recent examples which would provide any in-

dication that probable cause testing is not adequate and that random mandatory testing is a necessity?

Mr. RILEY. Well, I do not like to argue anecdotally. I think that you do not have to look any farther than the Chase accident to understand the nature of the problem. In the Chase accident, when both of the Conrail crew members came on duty, they were met by a Conrail management official who talked to them, inspected them, and provided exactly the kind of look/see that Senator Lautenberg was talking about. Not only did this individual provide that examination, but he had been through a special advanced training course in spotting alcohol and drug symptoms.

Notwithstanding that, both employees were cleared for duty, and an hour and 15 minutes later we had an accident that involved, regardless of their pre-duty meeting, drug use, and the point is just this.

Senator DANFORTH. I do want you to talk anecdotally. I do want you to talk about that instance. The two Conrail people, the engineer and the brakeman, both tested postively, is that correct, after the accident?

Mr. RILEY. That is correct, cannabinoids.

Senator DANFORTH. Pardon?

Mr. RILEY. Cannabinoids, marijuana or hashish.

Senator DANFORTH. All right, and an hour and 15 minutes before the accident; is that correct?

Mr. RILEY. Yes, roughly an hour and 15 minutes before the accident.

Senator DANFORTH. What did they do an hour and 15 minutes before the accident?

Mr. RILEY. When they came on duty, they were eyeballed by a management official who ascertained their fitness to go on duty.

Senator DANFORTH. How long did they spend with that management official?

Mr. RILEY. They spent about 15 minutes with him, I understand, although, Senator, I have to say I do not know that firsthand.

Senator DANFORTH. Has anyone talked to the management official since the accident?

Mr. RILEY. He has been interviewed, yes.

Senator DANFORTH. Has he indicated that he had any reason to believe that these personnel had been using any kind of drug?

Mr. RILEY. He did not spot any symptoms that to him indicated drug use.

Senator DANFORTH. He had received some sort of training? Could you tell us about the training he had received?

Mr. RILEY. Yes. When we put the alcohol and drug rule in a year ago, the catalyst we required in our rule, because we knew drug symptoms were difficult to spot, was that management personnel who were going to trigger reasonable cause testing for drugs go through a training course in spotting drug symptoms, and, frankly, we did that.

Senator DANFORTH. Had this person gone through such a training course?

Mr. RILEY. Yes, he had, and we did that to protect the employee's right, because we wanted to have people at least educated in what to look for and not acting at random.

Senator DANFORTH. At what time did he go through the training course?

Mr. RILEY. I cannot give you the precise time, but it would have been in the last year because the rule has only been in effect a year.

Senator DANFORTH. Within the last year he went through a training course, the management person did, on how to identify drug use, and he did not identify it at this time?

Mr. RILEY. That is correct.

Senator DANFORTH. Now, it has been said, as I understand it, that if there was mandatory random drug testing, there are two problems with it. One, drug testing can be inaccurate, and nobody wants anybody to lose their job or to be penalized in any way because something was inaccurate. Secondly, it is argued that mandatory random testing can be used by the company to pick on employees that the company does not like.

Do you think that those are strong arguments against mandatory random testing?

Mr. RILEY. I do not think either is valid. The second one is very easy to answer. Let me answer it. If you are going to withstand constitutional scrutiny, you have to have a perfectly random program. You use a randomized computer sample to literally pick names out of a hat so there is no ability to tamper with that sample, and if there is an allegation of tampering, it is very easy to acquire the computer tapes and illustrate what has been done.

Senator DANFORTH. This can be done by computer; correct?

Mr. RILEY. Oh, it is done by computer.

Senator DANFORTH. There is no picking on the employee by management. It is all names out of hat by a computer.

Mr. RILEY. That is correct, and if anybody messed with that program, it would be very easily detected.

Senator DANFORTH. How about the accuracy issues?

Mr. RILEY. I have lived with this now for a year. This is the one-year birthday of our alcohol and drug rule. It was held up for five months by lawsuits, but it has been in effect for a year. You will get about 5 to 6 percent false positives on your initial screenings, but any program that operates simply on initial screenings, Senator, is an amateur program that we should not tolerate.

If you turn up a positive on the initial screen, you then go to a confirmation test, gas, chromatography, mass spectrometry. If performed properly, they are 100 percent effective and will get as close to it as human testing can take you.

Let me add that the way to assure quality is to use one lab. In our program, we use one lab for all tests all over the country, the FAA lab, and we have found them to be very accurate.

Senator DANFORTH. Mr. Chairman, if I could just ask two more one-word questions.

First, do you believe that mandatory random testing is the sine qua non for an effective drug program?

Mr. RILEY. Yes, if used in conjunction with reasonable cause testing. I think you have to have both.

Senator DANFORTH. Yes, but it is the sine qua non; correct?

Mr. RILEY. Yes.

Senator DANFORTH. Secondly, do you understand any good arguments against mandatory random drug testing?

Mr. RILEY. Not persuasive arguments, Senator. I think that all of these issues involve some real balancing between public rights and private rights, but when I stood up at that Chase, MD accident, and I am not saying that that was the cause of this accident——

Senator DANFORTH. Do you have any right to go out and shoot yourself up with drugs and drive a locomotive?

Mr. RILEY. Senator, I feel very strongly about this. Operating a train in a public environment is a privilege. It is not a right. You take the lives of, at times, hundreds of people into your hands, or thousands if they live near a hazardous material train. It is inconceivable to me that one can legitimately argue that the inconvenience involved in the three or four minutes it takes to take a drug test outbalances the lives of hundreds of innocent people in a public environment.

Senator DANFORTH. It is a perfectly ludicrous argument, is it not?

Mr. RILEY. Not one that I have any sympathy with.

Senator EXON. I think the attorney is leading the witness.

Mr. RILEY. He does not need to, Mr. Chairman. You are right. You are right, and I would like to add one thing, if I may, now having been led.

It was exactly a year ago we went forward with our alcohol and drug rule. Our attorneys told us that if we went the reasonable cause testing route, we had at least a 95 percent chance of having it sustained in court. Under our authority, our ability to go to random testing is very dicey.

Now, having gone the reasonable cause route with a 95 percent probability, I have spent 18 months in court, five months under an injunction, and five days after the Chase, MD accident showed the need for this rule, the RLEA and Larry Mann went to court and filed new papers asking that the post-accident testing provision be overturned. This is the problem.

If we go with random testing of our own authority, maybe we can do it, but the odds are very good that we will find out sometime in the 1990s. I do not think that the people of the country ought to wait for that.

Senator EXON. Senator Pressler.

Senator PRESSLER. Thank you very much.

I have been reading both of the bills that have been introduced, one by Mr. Danforth and the other by Mr. Hollings, which are similar. I guess we are going to have a hearing on the details of them next Friday.

Senator Exon has indicated informally that perhaps we should broaden this, and since we have the momentum on, broaden it to include operators of vehicles on roads perhaps. This is my suggestion now. I really cannot speak for him, but I think he might be coming up with some legislation in this area. Since we are dealing with this problem, we should deal with it on a much broader basis. These bills seem to deal with airline and rail passenger act.

If we do do legislation, would you recommend that we expand it to include operators of vehicles such as trucks and so forth?

Mr. RILEY. Being a railroad administrator, I think I would have to at least talk to the FHWA administrator on that one before an-

swering for the Department, but it is certainly an area that you ought to look at.

Senator PRESSLER. That is the way it seems to me. It seems that we need not only drug and alcohol testing but annual eyesight requirements, physical conditions and so forth that are rigorously enforced almost to create an elite of people who operate, who have the privilege of operating these large vehicles on roads or airplanes or trains, because the various things that you pointed out are really important.

Where two engineers are caught redhanded altering something, we can put all the devices in the world on those trains or vehicles and not have it solved.

Now, let me ask you. The two engineers you mentioned earlier, they were caught redhanded altering a safety device or altering something. Tell us a little bit more about that.

Mr. RILEY. Mr. Chairman and Senator, I will tell you what I can tell you about it. These are both involved in active litigation right now, and I have to be very careful that I do not do something that is not responsible. I crafted that picture to include only a foot so it would not go beyond the bounds of fair play. Let me simply say that in one case we literally had an inspector in a cab see someone disable a safety device. He pulled out a camera and took a picture of it. You have seen that one. That was a deadman's control, and a wrench was rammed over the pedal to force it to constantly respond.

Senator PRESSLER. Why would he have done that?

Mr. RILEY. Well, what he has to do is respond every 45 seconds by hitting that pedal to show that he is awake and alert, and in some fairness, let us be honest about it. You try to sit in front of a console and do that every 45 seconds. I do not condone what was done, but you can see why they do it. We are spending a lot of money right now at FRA to develop a passive alerting system which keys off the different bodily breathing functions of an engineer so that it is not intrusive to the engineer and cannot be disabled. Until we get that developed, we need to keep the other ones working. That is why he did it.

The other case, by the way, was a bizarre one. We stopped a train. We found the automatic stopping device in this case turned off. For reasons that are still not entirely clear to me, our inspector stopped the train again shortly after we fixed it and found it turned off again. We pulled the speed tape out of the train, and the speed may have indicated that the speed control had been turned off and that the engineer then proceeded to speed. So what happened in that case was they wanted to go fast, so they turned off the control.

It is very unusual that you could catch that. We have got to configure our machines to make that harder, but there is a limit to which you can redesign any machine that requires human response.

Senator PRESSLER. Let me ask you about this. We have been talking mostly about passenger trains, but also freight trains, derailments, trains that carry substances that might be dangerous just going through a town or city. Do you recommend that we expand this legislation to include those problems?

Mr. RILEY. Which legislation, Senator?

Senator PRESSLER. There are two bills here, and I presume that you are going to submit a bill. Will the administration be submitting a bill?

Mr. RILEY. Yes. We will be submitting a bill, and my hope is to get it up here this week.

Senator PRESSLER. Will it include freight trains?

Mr. RILEY. Yes, ours applies equally to all forms of transportation, all forms of rail transportation. It is management and employee generic.

Senator PRESSLER. Will it include derailment problems?

Mr. RILEY. Everything, yes.

Senator PRESSLER. It will include derailment problems?

Mr. RILEY. Yes, absolutely.

Senator PRESSLER. I think that is very good, but to get some teeth into this, I think we have an historic opportunity to pass legislation here that has some real teeth in it for a change. I hope we do not slip and slide and put out something that is just more of the same. I also hope we expand it as much as possible when we have the momentum going, Mr. Chairman. I will certainly be helpful to you in any way that you can do that.

Senator EXON. Thank you, Senator Pressler.

I appreciate very much your being here, Mr. Riley, Mr. Walsh, Mr. Lindsey. It was a good presentation, and you have been helpful as usual. You are excused.

The next witness is Mr. James Burnett, Chairman of the National Transportation Safety Board.

Mr. RILEY. Mr. Chairman, I would like to ask the indulgence of the committee in one respect. I understand that one of the subsequent witnesses of the labor panel has a series of amendments they want to propose, but they have not shared them with us. After I see them, I would like to have the ability to file a written statement [1] with the committee just laying out our comments.

Senator EXON. We would very much appreciate your doing that, and it will be accepted.

Mr. RILEY. Thank you.

[The statement follows:]

STATEMENT HON. OF JOHN H. RILEY, FEDERAL RAILROAD ADMINISTRATOR

Mr. Chairman. It has been almost two years since I last appeared before this committee on railroad safety issues. The progress made over those two years has been historic—because by any criteria, the last two years has been the safest 24-months in the nearly 100 years of American railroading for which the federal government has had safety oversight.

In 1985, record lows were achieved in every major category where comparisons have historically been made to gauge railroad safety trends. The number of accidents, accident ratio, percentage of employee workplace injuries, and fatalities both in railroad operations and at grade crossings were the lowest ever recorded. Equally important is the fact that 1985's accomplishments represented continuation of a trend that began with the coming of deregulation seven years ago. These are the numbers; they speak for themselves.

Raw accident numbers in 1985 were down 70 percent from the peak pre-Staggers year of 1978. Accident rate—a more reliable indicator than raw numbers —declined more than 60 percent over the same period.

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[1] See p. 96.

Rail related fatalities are down 37 percent, and grade crossing fatalities down 48 percent from their 1976 peak. At a time when workplace injury rates are rising in many industries, our 1985 average of 8.6 per 200,000 hours worked was the lowest ever recorded, a 31 percent improvement from the last pre-Staggers year of 1979.

Because this hearing is being held a month earlier than the traditional March date—and I strongly commend the committee for doing that—we do not yet have complete figures for 1986. However, the data compiled for the first 10 months of last year makes it abundantly clear that 1986 will surpass 1985 as the safest year in the history of American railroading.

Preliminary figures for 1986 indicate that reportable accidents fell 21.3 percent below the record year of 1985. Track related accidents declined 25.5 percent, equipment accidents 22.9 percent, and human factor accidents 19 percent. Grade crossing accidents fell 7.6 percent. Employee workplace injuries declined 25.1 percent, and grade crossing injuries fell 7.8 percent. In one important category statistics did not improve—employee fatalities associated with train movements, where there were 26 in 1986 compared to 23 in 185. This is still, however, a substantial improvement over the 42 in 1984, and 77 in the last pre-Staggers year.

Overall, the 1986 safety numbers are remarkable figures—no other mode of transportation approaches the improvement in railroad safety achieved over this decade. And that improvement was not a matter of chance.

Although this committee will undoubtedly hear railroad labor and railroad management attack one another—and the Federal Railroad Administration (FRA)—in the course of this morning's testimony, the fact is that both labor and management have contributed substantially to this improvement with a renewed commitment to safety in their daily operations.

But in all candor, the contributions of management, labor and federal safety officers have not been the major cause of improvement in railroad safety. The major factor is a piece of legislation—the Staggers Rail Act of 1980, which partially deregulated the industry.

The Staggers Act of 1980 gave the railroad industry something it had not had in decades—positive cash flow. And railroads have used that cash flow to reshape their infrastructure into a safer system, as well as a more efficient one. The industry's annual investment in roadbed and structures have tripled in the seven years since Staggers. Post-Staggers capital investment now exceeds $10 billion, and it shows on every bottom line—in better service, stronger companies, and improved safety performance.

Having given the Staggers Act full credit for its accomplishments, I also believe that the improvement in railroad accident statistics unquestionably reflects an increasingly effective regulatory enforcement program at the federal level. The Federal Railroad Administration has concluded more major regulatory—and in some cases deregulatory—proceedings in the past three years than in any similar period in its history. Our inspection force, and the number of on-site inspections, are both at an all time high, and the results reflect it.

Exhibit A to this testimony illustrates the fact that over the past two years, the number of on-site inspections performed by FRA has increased in virtually every major category. Over the same 24 month period, FRA inspectors have completed comprehensive system assessments of four major carriers, and limited assessments of 44 others.

During the same time span, the agency has completed a series of major rulemakings:

ALCOHOL AND DRUG RULE

FRA has issued final regulations to combat alcohol and drug use in the railroad industry. These regulations were accompanied by initiation of a national program of education, counselling and treatment—*Operation: Redblock*—which now covers more than half of all employees in the railroad workplace. Unfortunately, we have been forced to wage an 18 month legal battle with the Railway Labor Executive's Association (RLEA) to keep that rule in effect. Although the rule is in fact in place today, its effective date was delayed for more than three months by the ongoing litigation, and as recently as January 9—five days after the Chase, Maryland accident—RLEA filed new documents before the Ninth Circuit Court of Appeals in support of its previous request to bar all reasonable cause and post-accident testing.

USE OF TELEMETRY DEVICES FOR INTERMEDIATE POWER BRAKE TESTS

FRA issued a series of regulations authorizing the use of modern telemetry devices to monitor railroad braking systems—in lieu of the antiquated system of

manual inspections that prevailed in the industry until 1985. The manual brake test is effective, but can only be performed when the train is standing still. Telemetry devices give the engineers the capacity to monitor the functioning of their braking systems at all times—whether the train is moving or stationary.

BLUE FLAG PROTECTION

FRA added a new form of protection for employees performing pre-departure inspection of rear-end markers.

COMMUNICATIONS

On January 27, FRA commenced a major safety inquiry on communications in the railroad industry. The inquiry covers topics ranging from effective radio communications to satellite technology and automatic train control.

GRADE CROSSING SAFETY

Finally, FRA conducted two days of public hearings on grade crossing safety. The purpose of those hearings was to elicit comments from all interested parties on how public and private efforts can be more effectively channeled to reduce grade crossing fatalities. Subsequent to those hearings, FRA issued a 32 page report summarizing its findings and outlining a series of new safety initiatives. A copy of that report has been submitted to this committee for review and consideration.

The legislation we plan to submit soon will enable FRA to maintain this level of effort over the next three years. It would support a field force of 379 positions, 325 of whom are inspectors. The overall program level of $40.64 million for 1988 represents an increase of $2.29 million over 1987.

In addition, the industry is, for the first time, being asked to share in financial support of the safety program through a system of user fees. By ensuring that those who benefit from the program share its cost of operation, the user fee proposal will enable this committee and the Administration to mesh our commitment to a strong safety program with the reality of increasingly tight budget ceilings.

Against this background, let me now turn from last year's record to this year's priorities.

The targeting of FRA resources is not a matter of chance. At the conclusion of each calendar year, the agency prepares and implements a national inspection plan. Using such factors as traffic volumes, accident histories, passenger loadings and hazardous material movements, the NIP sets forth detailed instructions on the conduct of inspections, manpower, utilization, and goals and priorities for each region. Beginning with calendar year 1987, the agency is also utilizing a resource allocation model to ensure proper geographic and substantive distribution of the inspector force. I will submit to this committee for review both the current National Inspection Plan (NIP) and FRA's safety inspector staffing study which was requested by the Appropriations Committee. These will give you a better sense of how the prioritization process works in practice.

We will also, in 1987, conduct full system assessments of three railroads—Conrail, the Soo-Milwaukee, and a commuter carrier yet to be designated. Those assessments will be supplemented by a special followup assessment on SEPTA.

Regulatory efforts over the next year will be fourfold:

First, both in timing and priority, is FRA's broad based reevaluation of communication practices in the railroad industry. Three days of public hearings were concluded in this proceeding last month, and we are now in the open docket period.

FRA has established a team of senior inspectors, headed by Frank Bridges of our Denver office, to perform a 10 month analysis of railroad dispatching practices. That analysis will focus on issues ranging from training to operating practices, workload, and stress. It is our intention to hold public hearings on these issues when the Bridges group has completed and complied a data base.

We will commence a formal inquiry on safety issues stemming from the construction and equipping of the locomotive cab. Considerable background work has been completed on that proceeding, and it will formally commence upon completion of the communications inquiry.

Finally, we are re-examining decisions made in the 1970's on the use of automatic train control by freight trains operating in the Northeast Corridor. Between 1977 and 1983, both FRA and National Transportation Safety Board (NTSB) considered recommending that freight and commuter trains operating on the Corridor be equipped with receiver units that would enable them to utilize the ATC transmission structure incorporated in the Northeast Corridor roadbeds. For a variety of rea-

sons, both agencies drew back from those recommendations. I believe that issue needs to be re-examined, and we will review it—and take whatever action proves necessary—in the year ahead.

Like the inspection priorities, these regulatory priorities are not a matter of chance. We recognize that resources available for safety enforcement are finite—both in the public and private sector. And the regulatory decisions we make have an enormous influence over where the industry will allocate those resources. In a very real sense, safety is the ultimate cost benefit issue, and a safety dollar spent on the fourth, fifth, or sixth most productive option, at the expense of a project with greater safety impact, is an opportunity wasted, and possibly forever wasted. The real challenge before this or any other safety agency is the need to tailor its regulatory program to direct scarce resources to the area of greatest real world impact.

At FRA, we take that challenge very seriously. We assess on an annual basis the relative merits of our regulatory options, and pursue them in what we believe, in our best judgment, to be the order of public benefit priority. We also review existing regulations, to ensure that those overtaken by time and technology are altered or eliminated. And we vigorously resist efforts to alter those regulatory priorities toward areas of lesser cost benefit and public safety impact. This committee has traditionally taken the lead in supporting us in those efforts, and we appreciate that.

This approach has produced solid progress throughout the 80's. But there is also a challenge in these achievements. Today's progress is the standard by which next year's performance will be judged. And each percentage improvement in accident statistics is geometrically harder to generate than the one which preceded it. As accident rates have fallen, the pattern of causation in railroad accidents has gradually shifted. Equipment related accidents, such as track and signal failures, have declined sharply. Track related accidents alone, for example, have fallen more than 70 percent in the 1980's. At the same time, human performance accidents have become an increasing percentage of all accidents, and a dominant cause of the truly serious incidents. We are now past the era in which we could generate dramatic improvements in safety performance with a few more track inspections, or the investment of additional dollars in eliminating deferred maintenance. The challenges of the future will be far more complex. If we are going to keep the accident rate moving downward, we need to develop mechanisms to deal with the complex issues that arise from human performance accidents. To do that effectively, we need the assistance of the Congress in closing a loophole in the Railroad Safety Act.

Under present law, FRA's enforcement authority extends only to railroad companies. The agency has no clear authority to levy sanctions—such as suspension of operating privileges—on railroad employees. This lack of authority is a serious concern in an industry where human performance is becoming a dominant factor in the truly serious accidents.

In some instances, the Alcohol and Drug Rule for example, we have attempted to reach individual conduct through the "backdoor" by requiring companies to place conduct restrictions on their own employees. Whether this rule will survive judicial scrutiny remains to be seen. At best, however, this is a backdoor approach to regulation, the best we can do under our current authority. And it leaves FRA entirely dependent on each company's willingness (and ability) to act against an individual who violates federal safety standards.

That ability is often restrained by complex and time-consuming grievance procedures. The Federal Aviation Administration (FAA) has made effective use of its authority to suspend the certification of aviation personnel where circumstances justify suspension. We are considering seeking similar authority as a powerful deterrent to employee misconduct. I believe the lack of such authority is a serious impediment to combatting human factor accidents.

For example, it draws into serious question our ability and authority to pursue an employee licensing program. The lack of clear authority to proceed directly against an offending employee, for example, through fine or suspension, would be a practical barrier to an effective licensing program even if we concluded the concept had merit from a safety policy perspective.

This lack of authority also stands as an obstacle to addressing what may be the most serious safety problem now confronting this industry—the tampering and disabling of safety devices by operating employees.

In the Chase, Maryland accident, a basic warning device designed to ensure crew attention in a stopping emergency was found to be taped and intentionally disabled. This is not an isolated incident. During the week of January 12, an FRA dragnet of the five major yards on the Northeast Corridor discovered six locomotives with whistles disabled in an identical manner—notwithstanding the fact that considerable advance warning of the inspection was given. In succeeding weeks, FRA inspec-

tors discovered three more Amtrak locomotives with equipment ranging from alerting devices to automatic train stopping devices disabled. Last week, the Commission of Inquiry into the tragic Canadian rail disaster at Hinton issued its final report—concluding that the disabling of the train's automatic stopping device was a likely contributing cause of the accident. Given the ease with which this type of tampering can be concealed, I fear that what we have discovered may truly be the tip of the iceberg.

This is an extremely serious problem. The best safety devices we can design will have little impact if they are disabled by the very people they are designed to protect—railroad employees. And our ability to deal with this issue is materially impaired by the fact that we can sanction only railroad companies. We can take no direct action against the employees, even if we catch them in the act.

The legislation which will be submitted to this committee will address this lack of authority

It is a simple fact, Mr. Chairman, that safety is a shared responsibility between management and labor, between individuals and corporate entities. A statute granting enforcement authority over half that equation can never be more than half effective. Accountability must extend beyond the amorphous corporate entity to the individuals who run the railroads, both in management and labor, as it does in the FAA and under existing hazardous material safety statutes. It is important for the assurance of rail safety that we demand accountability from labor and management alike.

Where we have the power to regulate, in areas like track, equipment and signals, FRA has produced spectacular improvement in accident ratios. We can produce similar results in the human factor area if we have the authority to act.

The Safety Act Reauthorization we plan to submit will recommend two other important improvements in the existing law.

The first would increase FRA's maximum civil penalty authority. That authority has not increased since 1970. Our proposal would more than compensate for inflation by increasing the limit fourfold to $10,000 per count.

The second proposal would grant FRA discretion, vested in the Administrator, to levy a $25,000 punitive assessment for flagrant violation of federal regulations, or a pattern of repeated noncompliance with federal directives. While this authority would rarely be used, it is a sanction Administrators should have to deal with the exceptional case where conventional remedies fail to gain cooperation of responsible authorities.

We believe these procedural amendments will materially enhance our ability to maintain, over the next three years, the kind of progress that has characterized railroad safety throughout the 80's. We ask your help in that effort.

Finally, and perhaps most important, I want to commend this committee, and particularly Senators Hollings and Danforth, who were Chairman and Ranking Member last year, for taking the leadership role in keeping the Safety Act Reauthorization free from amendments that mix economics and safety—and by doing so, divert scarce resources from areas of high safety impact to areas of low cost benefit. In 1983 and again last year, this committee took the position that it would rather have no safety authorization than a bill encumbered with amendments of this nature. It was a courageous position, and it was the right position. I supported it last year, and will do the same in the 100th Congress.

EXHIBIT A.—NUMBER OF INSPECTORS/NUMBER OF INSPECTIONS

	1983	1984	1985	1986[1]
Number of inspectors	305	320	319	325
Operating practice inspections	10,603	13,200	12,889	13,092
Hazardous materials inspections	6,493	8,684	8,653	8,594
Tank cars inspected	42,309	56,760	61,404	72,454
Mechanical units inspected	1,080,112	1,083,230	1,052,077	1,063,580
Signal units inspected	80,938	86,445	76,329	86,405
Track miles inspected	396,555	392,368	410,969	418,927

[1] 11½ month figures: Approx. 95 percent of 1986 total

Senator EXON. The next witness is Mr. James Burnett, Chairman of the National Transportation Safety Board.

I'd welcome you before this committee. I know you've been in the room listening to the discussions and the many suggestions that have come forth.

We're looking forward to your testimony now. You have filed it in advance. The full text will be accepted for the record. And we ask that you at this time please summarize in any fashion that you see fit.

STATEMENT OF HON. JIM BURNETT, CHAIRMAN, NATIONAL TRANSPORTATION SAFETY BOARD; ACCOMPANIED BY BERNARD S. LOEB, DEPUTY DIRECTOR, BUREAU OF ACCIDENT INVESTIGATIONS; AND WILLIAM ZIELINSKI, DIRECTOR, RAILROAD ACCIDENT INVESTIGATION DIVISION

Mr. BURNETT. Mr. Chairman and members of the committee, I'm pleased to have the opportunity to be with you today to discuss rail safety issues.

I will focus my testimony on four such issues: automatic train control; radio communications; alcohol and drug use; and passenger car interior safety.

Before beginning, I would like to introduce Dr. Bernard S. Loeb, Deputy Director of our Bureau of Accident Investigation, who's on my right. And on my left, Mr. Bill Zielinski, who is the chief of our Railroad Accident Investigation Division.

The Safety Board long has been concerned with the issue of operation of nonpassenger trains on the same tracks and higher speed passenger trains.

As early as 1970, we recommended that the Federal Railroad Administration study the feasibility of requiring a form of automatic train control at points where passenger trains are required to meet other trains.

The issue arose again in the investigation of a rear-end collision of two Texas & Pacific railway freight trains at Meeker, La, in 1975. The Safety Board determined that the engineer had failed to comply with the restrictive signal aspect.

In January 1976, the Board issued a safety recommendation that the FRA promulgate regulations to require an adequate backup system for mainline freight trains, that will ensure that a train is controlled as required by the signal, in the event that the engineer fails to do so.

The FRA responded by stating that it believed the immediate answers to the problem were improved training and effective testing rather than installation of costly mechanical or electrical backup devices.

It told us that they were going to get around to doing something about that within the next two years; I haven't seen any evidence of it yet.

Although the Chase accident remains under investigation, the Safety Board believes that an automatic train control device on the Conrail locomotive probably would have prevented the accident.

Further, it is apparent that Amtrak's Northeast corridor timetable modification, implemented as an alternative response to a 1978 Safety Board recommendation, did not provide the level of safety required by high speed passenger service.

Consequently, the Safety Board recommended last month, once again, the Amtrak require all trains operating on the high speed passengers tracks of the Northeast corridor, to be equipped with devices that will control the train automatically.

Another issue of longstanding concern to the Safety Board is the use of radios to improve communications in rail operations.

To underscore our continued interest in this important safety issue, the Board issued a safety recommendation to the FRA in January 1986, asking it to require that radios be installed on trains, and to provide requirements for their use, for their compatibility among railroads, and for their maintenance.

In the Chase accident, there was no operable train radio on the Conrail locomotive capable of providing train-to-train and train-to-fixed-station communications.

The Conrail engineer stated that he broadcast an emergency message that he could not stop on a portable, handheld radio, but the Safety Board has no other evidence that the message was made or received.

We also have found radio—the condition of maintenance of radios—to be a major issue in the Amtrak accident at Fall River, WI, which we currently have under investigation.

The Safety Board has also addressed the issue of operable radios with Amtrak, recommending that all trains operating on a main track, be equipped with an operable radio.

Last month the Safety Board reemphasized this issue by recommending to Amtrak that it require all locomotives allowed to enter and operate on the high speed passenger train trackage of the Northeast corridor to be equipped by an operable radio capable of train-to-train and train-to-fixed-station communications.

This recommendation was made in conjunction with the Chase accident.

Another issue vital to rail safety is the use of alcohol and drugs before or on the job. As the committee knows, toxicological tests of blood and urine samples were provided under the FRA regulations by some members of the crews of both trains in the Chase accidents.

The results for those crew members who provided samples were negative, except for the engineer and the brakeman of the Conrail train.

We have further tests to be conducted, however, on the remaining crew members who were not tested until about four days later.

Tests of the urine and blood samples of the two Conrail employees indicated the presence of both the psychoactive and the nonpsychoactive constituents of marijuana.

It is too early for the Safety Board to evaluate any effects the presence of the marijuana may have had in this accident. Safety Board human performance investigators are engaged in a very thorough investigation of the background of these employees.

The information thus gathered will be used, along with the toxicological test results, to analyze this accident.

Control of alcohol and drug use in railroad operations is a truly critical issue. In my first speech as Chairman of the Safety Board in June of 1982, I said that alcohol and drug use in the rail industry had disaster potential.

The Board called for the FRA to produce appropriate regulations as soon as possible.

The adoption of Federal regulations prohibiting consumption of alcohol and use of drugs by railroad operating employees before and during duty hours, and providing for toxicological testing after most accidents, has formed a framework under which the Board's objective to reduce the incidence of alcohol and drugs in railroad accidents could be achieved.

Certainly, if it were not for such a rule, we would not now have the toxicological results that we do have. Indeed, without these regulations, we would not have the additional evidence that tells us just how thorough a human performance investigation we need to conduct.

However, this horrendous accident has also pointed out that the regulations do not guarantee all covered crew members will be tested properly, and in a timely manner, following accidents addressed in the rule.

In the Chase accident, three Amtrak crew members, and the Amtrak dispatcher at Philadelphia, did not provide samples, and thus were not tested in accordance with the rule.

We took some tests on them about four days later.

Samples from one other Amtrak crew member were obtained from a Baltimore hospital after the crew member went to the hospital for medical aid.

The samples were then obtained by the FRA and tested.

Application of the rules was far from orderly, and more than half of those who should have been tested were not tested in accordance with the FRA regulations.

As far as its accident investigations, the Board plans to review implementation of the federal rule by the railroads, because the critical test of its success will be the extent of its application by the rail industry, and of its enforcement by the FRA.

The Board is concerned that certain employees may not be tested because railroads may not have established adequate procedures to maintain oversight of all covered employees following an accident, and to present them for testing within the time requirements of the regulation.

The Safety Board's investigation of the Chase accident also has highlighted concerns about the safety of passenger car interiors, the final issue that I wish to discuss.

The Board has compiled extensive documentation illustrating that passenger injuries occur as a result of the injury-producing features in the passenger car interiors.

Seat and seat restraint failures; lack of padding covering metallic parts of the seats; and inadequate baggage restraints, are some of the specific injury producing features causing concern.

The Board repeatedly has urged both industry and the FRA to take the necessary action to enhance the safety of passenger cars.

Mr. Chairman, with this brief statement, I will be glad to submit to questions.

Senator EXON. Mr. Burnett, thank you very much.

I will yield to Senator Kasten.

Senator KASTEN. I have no questions, Mr. Chairman. Thank you very much.

Well, excuse me, let me ask just one.

Jim, you've heard the questions back and forth that have to do with the enforcement authority.

Mr. BURNETT. I was outside the room. I didn't see a seat in here.

Senator KASTEN. Well, there was a point made by Mr. Riley and others, where the FAA has an ability to enforce not only equipment problems and deficiencies, but also problems caused by employees, whereas the railroad agency, Riley, is not able to enforce problems that are caused by employees.

Do you feel that the Federal Railroad Administration should have the same authority that the FAA and others in hazardous materials, et cetera, have to enforce problems against not only defective equipment, machinery, back to the manufacturers and the companies, but also the ability that the FAA and others have with regard to certain actions or acts by employees?

Mr. BURNETT. Well, the Board has not taken a position on that issue. We've never recommended, for instance, a licensing program.

I personally think that if correctly used, the added authority would be an advantage in safety. We've seen many examples of employees who have had very poor work records, having been put back to work by reason of litigation in which the railroads were forced to take them back, basically.

And certainly, their own disciplinary efforts have been demoralized by the instances in which they have been forced and compelled by law to take back employees who have not had a good record from the safety standpoint.

Senator KASTEN. Well, the examples that we saw were much worse than that. This was deliberate sabotage of important safety devices.

And even in those circumstances, Mr. Riley does not have any authority right now to go back to the employees.

What you're saying is, if properly utilized, you believe that would be a step in the right direction?

Mr. BURNETT. I do. I would like to caution the committee that it's possible to take the eye off the ball in that effort, in that the Federal Railroad Administration has a limited number of inspectors.

And in order to really deal with the problems that we see out there, we're going to have to have adequate supervision by the railroads themselves.

What I see in the many hearings that we've held on rail safety issues is that the railroads are reducing the level of their supervision of their own employees.

And I do not believe the Federal Government is prepared, under these fiscal circumstances, to try to replace that level of supervision that the railroads must give themselves.

So in connection with that, I would certainly hope that the ability of the FRA to impose major penalties on the railroad companies, such as we have seen with the Federal Aviation Administration, in terms of hundreds of thousands of dollars, and millions of dollars, should be provided if they are unable to properly supervise their own personnel.

Senator KASTEN. Do you have—I know that your responsibilities are the entire transportation area, all of the different transportation modes.

What's unique about the railroads, where we see deliberate, and evidently widespread, sabotage of safety devices in the locomotive cab?

I can't believe that that would be going on in an airplane. I don't think that school bus drivers, or public transit drivers, or Greyhound Bus drivers, or whatever, are sabotaging safety devices in their automobiles or in their buses or whatever.

But it seems that there is a deliberate and widespread pattern of safety devices, whether they be braking devices, retarding devices, whistles and other kinds of devices.

First of all, is this deliberate and widespread as seems to be—we've now heard from two groups of people in two different committees.

Is it deliberate and as widespread as it seems? They said they were picking up at least one person a day over the last few days, one deliberate disabling, sabotage, of a safety device.

Why is this happening in the railroad industry? And why don't we have the attitude and the atmosphere in the cab, if you will, that we have in most airplanes towards safety?

Mr. BURNETT. Well, we see it in airplanes, also, Senator, with the circuit breakers being pulled and things of this nature.

When you see this on a widespread basis, it's very good evidence that there is a design problem with the equipment, such that people are annoyed by it, or it's so impractical in some respect that they're stimulated to do that.

Now, I'm not excusing that, because it should be penalized. And I'm glad to see that the FRA is conducting vigorous enforcement to stop that sort of thing from happening.

But we are going to have to look at the design of these devices, and I think the FRA is doing that as part of their locomotive cab control study project that they have underway.

They also, in the rail industry, perhaps somewhat differently from some of the other industries that we deal with, have a much more tense labor-management relationship, and there's almost the total lack of supervision, actually being reduced by the railroads as they have merged in the last few years.

Which means that if someone wants to do this sort of thing, the chances of their being caught and it being corrected, and people being brought to some sort of discipline for it, is very remote.

Senator KASTEN. Thank you, Mr. Chairman.

Senator EXON. Thank you, Senator.

Let me ask a few questions here that have been on my mind for a long, long time.

With your significant experience and background in investigating what happens or does not happen in a whole series of areas, do you know whether or not any of the airlines or any of the other employers, do or do not routinely check the automobile drivers' licenses of pilots or engineers or the truck driver or the bus driver to see whether or not they should be alerted to some information that is public, for the most part, in that area, and how that would affect that individual's performance in a public conveyance?

Mr. BURNETT. The only practical way of doing that on a national basis is through the National Driver Register. It can be done indi-

vidually state by state, under some instances, depending upon state law.

As it presently stands, the Federal Aviation Administration, the Federal Railroad Administration and the railroad carriers do not have access to the National Driver Register.

I think one of the things that's coming out of the Chase, MD accident is proposed legislation, which I personally very much hope is adopted, which will allow the rail carriers, and the Federal Railroad Administration—and I hope that's also extended to the Federal Aviation Administration—will allow them to consult the National Driver Register.

I think we need to be careful in that legislation that we don't mandate the results of that consultation. In other words, just because someone has had, for instance, a drunk driving conviction on the highway does not necessarily mean that they should lose their employment.

But they certainly need to be diagnosed to see whether they're alcoholics.

Senator EXON. I think the important words there are "not necessarily.

Mr. BURNETT. Not necessarily, but in some cases they certainly should.

Senator EXON. Is not, Mr. Burnett, the drivers' license record of an individual available to an insurance company who is making a review of individual's record before agreeing to insure that individual with regard to liability insurance?

Mr. BURNETT. Well, I would hate to try to give a lecture on the privacy laws and access. I know that sometimes you waive your rights to privacy in those records as a result of applying for insurance.

And that sort of thing could, I'm sure, be carried over to perhaps to various transportation companies.

I think, however, to really look at it on a national basis, we've got a lot of improvements to make in the National Driver Register, so that we'll have the information that needs to be there actually there.

But that is the vehicle through which you can practically do this sort of thing. And I think access to that being provided will make it possible for the railroads to begin to do this, and for the air carriers to be doing this on a regular basis.

Senator EXON. Chairman Burnett, in your testimony, you indicated that you were in support of legislation that would require some automatic braking devices should an engineer ignore and go through a signal.

I assume that the Northeast Corridor is what you're referring to. In other words, is it not true that the only tracks basically that we have in the United States today that are equipped to handle that sort of an automatic braking device are in the Northeast Corridor?

Mr. BURNETT. The train bed equipment has already been installed in the Northeast corridor. So all we're talking about there is adding the equipment to all of the locomotives on the Northeast Corridor.

Now, the Safety Board in its recommendations, going back to 1970, has gone beyond this. We recommended this, and we once

had it, for the entire passenger train trackage in the United States, a system that was less sophisticated than what's available today, admittedly.

Senator EXON. So what you're saying is, that anywhere where Amtrak runs——

Mr. BURNETT. We've even said all mainline freight trackage. But now, that can't be done immediately, and it certainly should be done on a prioritized basis.

We've recently received cost figures, estimates by the FRA on that, which suggest that that's an impractical thing to do.

We have some reservations about their cost figures, and would like to study those a little bit more before evaluating their response.

Senator EXON. Mr. Hasselman will be testifying later on this morning with regard to some safety concerns with regard to automatic braking, that this might cause derailments.

As the Safety Board Chairman, what do you have to say about that? Do you think that that is not a major problem?

Mr. BURNETT. Well, there is concern within the industry about the fact that the automatic braking process, which would stop the train, or at least slow them down—and some of them only slow to 20 miles an hour, I think, as they pass through a signal—might cause derailments.

However, that's something that deals with the design of the system. And I cannot think of a more hazardous safety situation than a train running through a signal.

Because it's an invitation to a collision, and collisions cause derailments also.

We're not in a position of wanting to throw cold water on those concerns, but the issue is to meet the concerns.

Senator EXON. We're also talking now about more elaborate black box devices that could be monitored after a crash.

In other words, the first thing that happens after an airplane crash, you go in and look for the box, whatever it's called, to see what happened on that airplane.

Not only, as I understand it, does it record the radio messages to and from those aircraft, do those aircraft boxes also give you as safety investigators information as to the speed the airplane was flying at, where it turned left or right and descent and so forth? Is that all incorporated in those boxes?

Mr. BURNETT. The flat data recorder—as opposed to the cockpit voice recorder, which gives us recordings in the cockpit—gives us information about the control inputs, especially the better digital flat data recorders.

And we have comparable devices that are available and are being used in the rail industry that record throttle settings as well as speed, braking actions, and that sort of thing.

And that is very helpful in the accident investigation process. We are be very hopeful that all locomotives that are used in mainline service would certainly be equipped with those devices.

Senator EXON. For example, if the crew didn't put down the landing gear when they came in for a landing, that would show up on that device, is that correct?

Mr. LOEB. Not specifically, but there would probably be indications of changes in the flight performance which we could relate back to that kind of event.

Senator EXON. Well the reason I asked that question, and I'm certainly not an expert in this area, I'm just wondering, do the present boxes that we have on locomotives give any indication that the safety devices have been tampered with?

The picture that we had earlier from Mr. Riley with regard to a wrench being placed on the dead man control. If the horns were taped over, these signalling devices, to give the engineer warning that he'd gone through a signal, do those show up on the boxes, if there are boxes on locomotives?

Mr. BURNETT. They wouldn't directly. Whether there's an analytical technique that would help us figure that out, like we do in aviation, I'm not sure, although I rather doubt it.

Senator EXON. Well, we certainly should have some improvements in that area, should we not?

Mr. BURNETT. Certainly.

Senator EXON. Gentlemen, thank you very much. Excellent testimony. You've been very helpful. And you are excused.

[The statement follows:]

STATEMENT OF HON. JIM BURNETT, CHAIRMAN, NATIONAL TRANSPORTATION SAFETY BOARD

Mr. Chairman, Members of the Committee, I am pleased to have the opportunity to be with you today to discuss rail safety issues. The tragic train accident that occurred near Chase, Maryland on January 4 has served to underscore the need to take another look at what improvements have been made in rail safety and what further needs to be done.

Since the Committee is well aware of the events surrounding the Chase collision involving an Amtrak and a Conrail train, I won't take the time now to review the details. Instead I will focus my testimony on four railroad safety issues which are relevant to this and many other accidents; automatic train control, radio communications, alcohol and drug uses, and passenger car interior safety.

AUTOMATIC TRAIN CONTROL

The Safety Board long has been concerned with the issue of the operation of nonpassenger trains on the same tracks as higher speed passenger trains. In the case of the January accident, Conrail locomotives were not equipped with a device that could have controlled them automatically as required by the appropriate signals if the engineer failed to respond properly. Thus they were able to enter the high speed (over 100 mph) passenger train main track of the northeast corridor even though the home signal indicated that the train should stop. This main track had been cleared previously for occupancy by Amtrak train No. 94.

As early as 1970 we recommended that the Federal Railroad Administration (FRA) study the feasibility of requiring a form of automatic train control at points where passenger trains are required to meet other trains. In 1972, the FRA told us that they had conducted such a study and found that the best system would appear to be a hybrid, composed of both present and proposed levels of mechanical control. According to the FRA, an automatic train control system was not possible at the time because of its costs and extensive installation time.

The issue arose again in an investigation of a rear-end collision of two Texas and Pacific Railway freight trains at Meeker, Louisiana in 1975. The Safety Board determined that the engineer had failed to comply with a restrictive signal aspect. In Janaury 1976 the Board issued a safety recommendation that the FRA promulgate regulations to require an adequate backup system for mainline freight trains that will ensure that a train is controlled as required by the signal in the event that the engineer fails to do so.

The FRA responded by stating that it believed the immediate answers to the problem were improved training and effective testing rather than installation of costly mechanical or electrical backup devices. The FRA repeated this assessment in 1977,

responding that it intended to complete an analysis of training and testing procedures in the railroad industry. The agency estimated that constructive action will be about 2 years in the future.

Additional communications with the FRA took place during the early and mid 1980s without satisfactory action being taken.

As a result of an accident at Seabrook, Maryland in June 1978 in which a Conrail commuter train struck the back of an Amtrak passenger train, the Safety Board issued a safety recommendation in which it asked Amtrak, specifically, in June 1978 to require all trains that operate on the northeast corridor to be equipped with an automatic train control system.

Amtrak responded in November 1980 that, as a result of this recommendation, the northeast corridor timetable had been modified to require that a train not equipped or equipped with an inoperable speed control system must not pass a signal displaying a stop and proceed indication except when the conductor or engineman has been given verbal authority to do so by the train dispatcher or authorized operator. The timetable modification further stated that if, after stopping for three minutes, the conductor or engineman of the train is unable to communicate with the train dispatcher or operator, the train may proceed.

Amtrak wrote the safety Board in August of 1981 that they were surveying all equipment in the northeast corridor to determine the scope of noncompliance with the recommendation. In February 1982, Amtrak again wrote to the Safety Board stating that all Amtrak-owned locomotives and self-propelled cars operated in revenue service in the northeast corridor were equipped with automatic train control devises. Amtrak reiterated that it had modified the timetable and that prohibition of the operation of vehicles not equipped with automatic train control devices would disrupt service on the northeast corridor significantly. Amtrak further stated that the modified timetable had been in effect for more than one year without disruption of service. Amtrak asked the Board to reconsider the intent of this recommendation.

In September 1982 the Safety Board wrote Amtrak that, in view of the information provided, Amtrak's actions were considered an acceptable alternative to the intent of the recommendation.

Although the Chase accident remains under investigation, the Safety Board believes that an automatic train control device on the Conrail locomotive probably would have prevented the accident. Further, it is apparent that Amtrak's northeast corridor timetable modification did not provide the level of safety required by high speed passenger service.

Consequently, the Safety Board recommended last month once again that Amtrak require all trains operating on the high speed passenger tracks of the northeast corridor to be equipped with devices that will control the train automatically as required by the signals if the engineer fails to do so. The Safety Board also has asked that, pending the installation of such devices, Amtrak require that the operators of all trains not equipped with such devices stop before entry, regardless of signal asepct, and secure positive clearance to enter the track before proceeding further.

RADIO COMMUNICATIONS

Another issue of longstanding concern to the Safety Board is the use of radios to improve communications in rail operations.

Safety recommendations have been issued to the FRA and the Association of American Railroads (AAR) stressing the need for radios to be required equipment on trains, for compatibility of radios between railroad properties, and for standards governing the use of radios in industry. Recommendations also have been issued to various individual properties on the same issues.

To underscore our continued interest in this important safety issue, the Board issued a safety recommendation to the FRA in January 1986 asking it to require that radios be installed on trains and to provide requirements for their use, for their compatibility among railroads and for their maintenance.

In the Chase accident, there was no operable train radio on the Conrail locomotive capable of providing train-to-train and train-to-fixed station communications. The Conrail engineer stated that he broadcast an emergency message that he could not stop, but the Safety Board has no evidence that the message was made or received.

The Conrail locomotive radio normally used for train-to-train or train-to-fixed station communication was inoperative. The Conrail engineer had only a portable type of radio, not well suited for this purpose. Whether or not evidence gathered in the investigation supports the engineer's contention that he tried to make an emergen-

cy broadcast prior to the collision, this accident points out the potential need for an operable radio capable of train-to-train and train-to-fixed station communications.

As a result of its investigation of the head-on collision of Burlington Northern freight trains near Westminster, Colorado in August 1985, the Board reiterated and reemphasized the importance of this safety recommendation. Investigation of the accident revealed that operating personnel involved in the accident had complained about the performance of the radio installed on one of the trains. The FRA has indicated that it will be conducting public hearings on the general topic of radio communications in the railroad industry early in 1987. The Safety Board will continue to aggressively pursue the issue of ineffective radio communications with the FRA.

For the record, the Safety Board also has addressed the issue of operable radios with Amtrak, recommending that all trains operating on a main track be equipped with an operable radio.

The Board's investigation of a head-on collision at Edison, New Jersey in April 1974 revealed that Amtrak's passenger train had been allowed to depart New York with an inoperative radio. The Board points out that this recommendation was cast in terms of Amtrak-owned equipment, and Amtrak ultimately complied with the intent of the recommendation.

Last month the Safety Board reemphasized this issue by recommending to Amtrak that it require all locomotives allowed to enter and operate on the high speed passenger train trackage of the northeast corridor to be equipped with an operable radio capable of train-of-train and train-to-fixed station communications. This recommendation was made in conjunction with the Chase accident.

ALCOHOL AND DRUG USE

Another issue vital to rail safety is the use of alcohol and drugs before or on the job. As the Committee knows, toxicological tests of blood and urine samples were provided under the FRA regulations by some members of the crews of both trains in the Chase accident. The results for those crew members who provided samples were negative except for the engineer and the brakeman of the Conrail train. Tests of the urine and the blood samples of these two employees indicated the presence of both the psychoactive and the non-psychoactive constituents of marihuana.

It is too early for the Safety Board to evaluate any effects the presence of the marihuana may have had in this accident. Safety Board human performance investigators are engaged in a very thorough investigation of the background of these employees. The information thus gathered will be used along with the toxicological test results to analyze this accident.

Control of alcohol and drug use in railroad operations is a truly critical safety issue. In my first speech as Chairman of the Safety Board in June 1982, I said that alcohol and drug use in the rail industry had "disaster potential." The Board called for the FRA to produce appropriate regulations as soon as possible.

The adoption of federal regulations prohibiting consumption of alochol and use of drugs by railroad operating employees before and during duty hours and providing for toxicological testing after most accidents has formed a framework under which the Board's objective to reduce the incidence of alcohol and drugs in railroad accidents could be achieved.

Certainly, if it were not for such a rule, we would not now have the results of the toxicological tests of that portion of the surviving members of the train crews in the Chase accident that were tested. Indeed, without these regulations we would not have the additional evidence that tells us just how thorough a human performance investigation we need to conduct.

However, this horrendous accident has also pointed out that the regulations do not guarantee all covered crew members will be tested properly and in a timely manner following accidents addressed in the rule. In the Chase accident, three Amtrak crewmembers and the Amtrak dispatcher at Philadelphia did not provide samples and thus were not tested in accordance with the rule. Samples from one other Amtrak crewmember were obtained from a Baltimore hospital after the crewmember went to the hospital for medical aid. The samples were then obtained by the FRA and tested. Application of the rules was far from orderly, and more than half of those who should have been tested were not tested in accordance with the FRA regulations.

In commenting in 1984 on the FRA's proposed rulemaking on alcohol, the Safety Board stated that the final rule should state clearly that the post-accident testing program supplements rather than replaces the Safety Board's authority in the Independent Safety Board Act of 1974 to order an autopsy. It should point out also that the Board has authority to seek other tests of train crews or the samples drawn

from them under this rule, as well as authority to obtain or take possession of any evidence which pertains to an accident.

As part of its accident investigations, the Board plans to review implementation of the federal rule by the railroads, because the critical test of its success will be the extent of its application by the rail industry and of its enforcement by the FRA. The Board is concerned that certain employees may not be tested because railroads may not have established adequate procedures to maintain oversight of all covered employees following an accident and to present them for testing within the time requirements of the regulation.

Another concern of the Board's is that the dollar value of damage in accidents estimated by railroads may be understated to keep it below the $500,000 threshold above which toxicological testing of employees is required under the federal regulation.

PASSENGER CAR INTERIOR SAFETY

The Safety Board's investigation of the Chase accident also has highlighted concerns about the safety of passenger car interiors. The Board has compiled extensive documentation illustrating that passenger injuries occur as a result of the injury producing features in the passenger car interior. Seat and seat restraint failures, lack of padding covering metallic parts of the seats and inadequate baggage restraints are some of the specific injury producing features causing concern. The Board repeatedly has urged both industry and the FRA to take the necessary action to enhance the safety of passenger cars.

The Board's concern with the safety of passenger car interiors dates back to 1970 when, as a result of its investigation of an accident in Franconia, Virginia in January 1970, it recommended that the FRA institute immediate regulations requiring all futue new and rebuilt passenger cars be equipped with secured seats and luggage retention devices.

The FRA responded initially that it would begin a study in this area and, based on an evaluation of the study, it would determine the need for regulations. The date for completion of this study was extended several times, and the Board has never received a final copy.

The investigation of an Amtrak train collision at Wilmington, Illinois in July 1983 again revealed inadequacies in the design of passenger car interiors and, as a result, the Board issued a recommendation which called for the FRA to expedite studies on the interior design of passenger cars and publish recommended guidelines for securing seats and for luggage retention devices.

The Board's investigation of an Amtrak train derailment at Kittrell, North Carolina in March 1984 demonstrated again the need for luggage retention devices, and this was reiterated to the FRA. In June 1985 the FRA responded to the Board's recommendation and indicated that it planned to take no further action. The Board expressed disappointment in this decision in view of the overwhelming documentation that injuries have occurred and continue to occur as a result of the features of the passenger car interior, particularly unrestrained luggage from the overhead racks.

The Board cited another Amtrak accident in Astoria, Queens, New York in July 1984 which again revealed that these sources of injuries continue to pose a threat to passengers. The Board urge the FRA to reconsider its decision and to take action to implement its recommendation. No further response from the FRA has been received.

The Safety Board also has issued recommendations over the years directly to Amtrak regarding improvements in the design of passenger car interiors. These recommendations have been directed at baggage retention of overhead luggage racks, inadequately secured equipment, seat locking devices and padding covering metallic seat parts. Amtrak has made some changes as a result of these recommendations, but has failed to implement, fully, a number of the recommendations, especially those relating to improve luggage retention.

Reports of seat failures and loose microwave ovens in the cars involved in the Chase accident again suggest that further action is needed in securing seats, equipment in the food service cars and overhead luggage. The Safety Board will scrutinize closely the effect of the improvements instituted thus far by Amtrak and will assess the need for further recommendations.

Mr. Chairman, that completes my formal statement. I will be pleased to respond to questions.

Senator EXON. Our next witness is Mr. J.R. Snyder, legislative and safety chairman of the Railway Labor Executive Association of Washington, D.C.

Mr. Snyder, we welcome you at this time, and please come forward.

Welcome, Mr. Snyder. We have advanced preparation of your remarks, which I have already indicated, along with others, have been accepted for the record.

You have been before this subcommittee on many occasions. We welcome you back, and we would be pleased to hear you and the testimony of your assistants. If you would proceed at this time.

STATEMENT OF J.R. SNYDER, LEGISLATIVE AND SAFETY CHAIRMAN, RAILWAY LABOR EXECUTIVES' ASSOCIATION; ACCOMPANIED BY GENE PLOURD, ASSISTANT; AND LARRY MANN, COUNSEL

Mr. SNYDER. Thank you, Mr. Chairman and members of the committee and the staff.

I have been here many, many times, and it is a pleasure to be here this morning again. I have with me Mr. Gene Plourd, my assistant, who is qualified as an engineer, and Mr. Larry Mann, our counsel, who has been representing railway labor in railroad safety matters since 1970.

We have at this table 75 years of experience dealing with our member employees on the railroad.

I appreciate your incorporation of the statement in the record. It has been prepared by the Brotherhood of Locomotive Engineers.

Senator EXON. Without objection.

Mr. SNYDER. Mr. Chairman, I have been listening to the witnesses very carefully this morning, and some of the things I can not agree with. I want to address in my testimony some recommendations that we have handled over the years with FRA, and the Congress, which would prevent further accidents.

I have not prepared myself for alcohol and drugs, but I want to say we do not condone alcohol and drugs on the railroad. We work with management a great deal in trying to prevent these problems. However, if you have any questions on alcohol and drugs we are prepared to answer them.

I understand that there will be a hearing on Friday before this committee, but we are prepared to answer any of your questions.

Senator EXON. Thank you, Mr. Snyder. We will be getting into that, because to a considerable extent this subcommittee hearing is a forerunner of the full committee hearing which takes place on Friday.

Mr. SNYDER. I would like first to agree with the National Transportation Safety Board. There has been a lot said here this morning about alcohol and drug issues. However, we do not lose sight of these other safety matters. It is a serious situation, but we have so many other related things that could prevent these accidents without the drugs and alcohol involved.

We wholeheartedly support the recommendation of the National Transportation Safety Board relating to the automatic train control. I have worked on the railroads equipped with train controls

when they had a lot more passenger trains and freight trains, and automatic train control works.

Where the engineer gets sick, is dead, or is drunk or anything else, it will work. The unfortunate thing is, some railroads made application to the FRA in the early seventies to discontinue the safety device. They gave the railroads permission to discontinue it.

In my opinion if Conrail had had such a safety device on their engine at Chase, MD, this could have prevented the accident with all those people getting killed.

Not only do we recommend them in the Northeast Corridor, but all over the country. They will only work where you have the interblock system with signals.

Where you do not have the signals, you have to rely on our faithful employees to prevent the accidents. But we would recommend that they be all over the country.

I think that if you take that money that it cost for that one accident at Chase, Maryland, it would more than pay for installation of those automatic train controls on every engine in this country.

So we strongly recommend it, and we will work with this committee to help achieve it.

Mr. Chairman, we have been before this committee before and Mr. Riley's memory is not very good. He said he did not have a chance to hear what our recommendations were. Well, he has.

The House Bill H.R. 2372 was passed in 1985, that he opposed vigorously. After hearings from all parties were held in the House committee, and the bill was reported out of subcommittee, the full committee, and the Rules Committee, and it was passed unanimously on the floor of the House.

Well, the House even substituted the Senate number. I think it was S.R. 1031 or 81. They took the Senate number and incorporated the House bill into the Senate bill with these recommended improvements in safety. But in this committee, you were the only one that gave us a little shake.

You remember the harassment issue which passed in your subcommittee, but it got lost in the shuffle. The only thing we got out of that was a strict authorization and no other action.

In the hearings which were held before this committee. We had two presidents from the Brotherhoods as witnesses—the Carmen on train inspection, and the Signalmen. You remember that.

Senator EXON. I remember it very well.

Mr. SNYDER. We recommend that you take into consideration as early as possible the list of proposed safety amendments which I will briefly discuss.

We need to require the FRA to do what it should have done a long time ago. It will cost very little money to do some of these things that we have asked for. Even with these statutory changes, we will have to have the hearings and everybody will be heard from. Then we will pray that we get a decent regulation out of it.

This Administration has been a failure as far as railroad safety is concerned. We do not have any charts, we do not have any Vanna Whites but we deal with the men out there on the job daily. I have these inspectors that call me. People out there call me about accidents and all, and so I deal with it.

If you will just give me about five more minutes on that light up there. I do not want to have a wreck here and go across that red signal.

Senator EXON. Unfortunately, we do not have automatic brakes on these cameras or on these lights. It is controlled by the chairman. So please go ahead and complete your statement.

Mr. SNYDER. I will briefly list these proposals. We would require within 180 days regulations to test and inspect the signals at rail/highway grade crossings. Within 180 days we request regulations for qualification standards of the employees who conduct power brake inspections in railroad freight.

I could give you a 30-minute talk on how we worked with the railroads on this, and it is a failure out there. Instead of requiring a 500-mile inspection, we agreed to a 1,000-mile inspection of the brakes. As a result of that change, the railroads cut off a lot of qualified carmen.

All we are asking for is for railroads to designate the experienced and qualified employees with certain training before they are allowed to inspect these trains. They are not inspecting these trains out here like they did under the regulations or the law. They are just not doing it, and we can prove that in many, many cases.

Concerning the dispatching of trains, we have had trouble where dispatchers did not have adequate training in that tower. One example is a dispatcher with two days training in the tower and he caused a wreck on Metro North. Mr. Riley has testified previously that he just missed that train involved in the accident.

We are asking for some regulations and requirements for training. These people all over the country are dispatching miles and miles away. It is like an air controller, you see.

There is no training for them or anything. You need to ask these railroad officials when they testify how many employees they have hired on the operating end in the last few years.

There is also the stress and the harassment issues that I have previously talked to you about. Our people are working a full 12 hours. A lot of times the hours of service law is being violated. Not all of them, but a lot of them are violating hours of service laws; This adds to the stress and strain out there on the railroad, with a shortage of crews in a lot of cases.

I will not get into the caboose issue. The biggest mistake the railroads ever made was to cut off the cabooses on most of the trains. Some of them could be cut off, but the railroads removed a big safety device by eliminating those cabooses. They have nobody on a 150- or 100-car train carrying all kinds of hazardous material. They are operating across the country and are unable to watch the rear end.

We had all kinds of complaints about who would check the rear end and the braking system on the train before it left the terminal. We said it should to be a member of that crew.

The FRA ruled against us in December, and Mr. Riley said that anybody could check that train, a clerk out there or anybody.

That's all right, but they do not have the experience to do that. This is just one of the things we're asking here.

We have been so frustrated over here. We spent so much money on correcting the safety problems. We are requesting that, where the Secretary does not enforce safety violations and safety laws and regulations that we be allowed to go into court and require enforcement.

We do not want to do that except as a last resort. We are not in the business of harassing the railroads to make them pay big fines.

Some of our maintenance of way people are operating all kind of vehicles out here and our train crews and all. There should be regulations requiring safe transportation during work and to and from the work.

The engineers have requested a change in hours of service law to prohibit an employee from working more than 22 tours of duty in any 30 day service.

With the exception of the last two recommendations, these were in the House passed bill in 1985. Since then there were some things developed, and that is the reason we have added these other two. The RLEA represents all the railroad brotherhoods. It is my privilege to do that here.

We think that in most cases these proposals would cost very little money. In other cases it would cost them nothing; and they would prevent further accidents down the road, Mr. Chairman, is what we are trying to accomplish.

We are trying to cooperate with the railroads, but the system safety plan in the FRA is a sham. That program gives the carriers the right to violate the laws wholesale. Whenever I receive a violation here, I give instructions to handle that on the local property first. I advise my members not to send it to me unless you handle it on the local property.

As a reason for being allowed to impose fines on individuals, Mr. Riley mentioned delays in the grievance process. There is no delay in firing an employee. Mr. Chairman, do not give the FRA authority to impose a penalty on employees for things such as the train control.

These engineers and brakemen on Conrail have been fired. I am sure they have been fired already. They are not going to get back to work.

That was a serious accident, and the railroads have authority now to fire you right off the bat, and they do it. I was on a tough grievance committee for eight years. The railroads have got the authority to fire, and they will enforce that authority. You do not need a Federal regulation covering that.

Since this accident, you are going to see very few of those whistles covered up. If they do, the employee ought to be disciplined, by the railroads, not the FRA.

Let the FRA supervise this problem and let the railroads and the workers straighten that part of it out first. If it is not corrected, then I will give you a green light on it.

Senator EXON. Mr. Snyder, thank you very much.

Let me ask you a few questions here and then I will defer to my ranking member. It is my understanding that your organization is challenging the Federal Railroad Administration's current drug and alcohol testing rules in the courts.

What is the basis for your challenge to these rules, and what is the position of your organization on random testing for drugs and alcohol?

Mr. SNYDER. It is unconstitutional and we are against it. Mr. Mann can address this. He is handling all the legal matters.

Senator EXON. Mr. Mann, I would be glad to hear from you on this.

Mr. MANN. Mr. Chairman, I have filed a lawsuit on behalf of railway labor and we are challenging the rule on constitutional grounds. It is an unreasonable search and seizure to test someone without any semblance of probable cause.

What happens out there is not just a probable cause test, as Mr. Riley would have you believe. Even if there is a relatively minor rule violation, that triggers the testing of the entire crew. We are not seeking to protect those who are guilty of alcohol and drug testing.

There are thousands upon thousands of employees who never drink or use alcohol in the rail industry. These are the people we are going to protect, particularly if their constitutional rights are being violated, and which we sincerely believe is occurring.

Senator EXON. Well, Mr. Mann, now you have stated—and I do not think there is anyone who has any quarrel, and I think that is a responsibility that you have as an organization representing your people, to protect them constitutionally.

And I would say that you probably have made some points in the statement that you just made, but I take it that, now that you have stated what you are against and what you are going to do as best you can, through the courts to protect your people. There is also, it seems to me, the first and foremost concern for the protection not only of the passengers, but also the crews on those trains, because we had that terrible accident north of here a month ago.

It is also true that most of the railroad accidents that happen in this country do not involve passenger trains; they involve one or more freight trains, where you have people from your organization thereon.

It seems to me that you and your organization would be leaping to the side of those of us who are trying to improve safety with some kind of a random drug testing program that would increase the safety of people like your members, who for the most part are the first ones at the scene of a train wreck.

Now, what are you for with regard to drug and alcohol testing? Anything?

Mr. MANN. Mr. Chairman, I think you are going to be pleasantly surprised by railway labor's position on the random drug testing. We are developing a comprehensive package for you to consider on random testing, which we will present to you Friday.

It is not in its final shape yet, but I think the members of the full committee will be pleasantly surprised by what we have to offer.

Senator EXON. Well, I will look forward to that, because that is what we need. We have got a problem that we are all involved in and we are trying to get all the input we can.

Do you agree with the statement that I made at the outset of these hearings this morning, that as long as we are working on this

program we should have an all-encompassing plan, perhaps, that affects not only railroad people that we are concentrating on now, which we always do after a terrible accident—and that is the only good thing about terrible accidents, is it forces us to take some action that we might not otherwise take.

But should we not anticipate something like this happening also in other fields of public transportation—airplane drivers, truck drivers, bus drivers, along with locomotive drivers? Should we not have perhaps an all-encompassing bill?

And while we are going to do something in this area, why not have it across the board, rather than piecemealing it?

Mr. MANN. Mr. Chairman, I understand you will have representatives from all modes of transportation at the hearing on Friday, and I am sure they will address it. But I think what has been overlooked with respect to railroads and drug testing is that no supervisory employee, is covered by any rule or regulation on alcohol and drug testing.

It would be very interesting to test supervisors after lunch every day to see just what the alcohol content is in their bodies. There are no rules or regulations covering supervisors and we strongly urge you to consider that in any legislation that you propose.

Senator EXON. Well, again, remember I started saying what is good for the goose is good for the gander, and I really believed that that's—when I said that, I was maybe not directly but indirectly addressing the concern that you have.

My time is up. I yield to Senator Kasten.

Senator KASTEN. Mr. Chairman, thank you.

Mr. Snyder, what should be done to a railroad employee who sabotages safety devices?

Mr. SNYDER. I have 47 years seniority in the railroad industry, Senator. I have performed services as a conductor, a brakeman, a flagman, a switchman, a baggage master, and even running an engine sometimes with the engine crew.

Until this wreck at Chase, Maryland, I had never heard the word "sabotage" on any wreck in the railroad industry. I really have not. It has blossomed out in the media.

Senator KASTEN. Well, we could say "disable." I was trying to pick a word. Maybe "disable the safety device."

Mr. SNYDER. Of course, some of the engineers are having to put up with a lot of fumes in the engine particularly in tunnels. The FRA has not done anything about that. Also there is a lot of stress out there operating a train.

When we were seeking a change in hours of services law in 1970, which fortunately Congress amended, and reduced the work day from 16 hours down to 12 hours, we had a state law in the state of West Virginia—Governor Rockefeller would like this—that it was unlawful to plow a mule over 12 hours. Through the assistance of Chairman Harley Staggers, we brought the law up to date and reduced a work day to 12 hours.

Even that is too long to work in a day. A lot of times a crew works more than that.

Senator KASTEN. Mr. Snyder, excuse me. You are not explaining to me why an employee of the railroad may sabotage a safety

device. That was not my question. My question was what should be done to a railroad employee who sabotages a safety device?

Mr. SNYDER. He should be disciplined, but the equipment in the locomotive should be improved, such as Automatic train control, and the little whistle in the cab.

Senator KASTEN. Make the whistle harder to sabotage, is that your answer?

Mr. SNYDER. If that is what you want to do.

Senator KASTEN. But the employee should not be disciplined in any way?

Mr. SNYDER. Oh, yes, I said he should be disciplined. I do not think you will have that problem in the future.

Senator KASTEN. Should he be immediately fired?

Mr. SNYDER. Well, I would have to hear both sides of it, but I am sure he would be fired. Mr. Riley made an inaccurate statement, that it takes so long for grievance matters to proceed. The problem is that FRA does not police things out there.

Senator KASTEN. Mr. Snyder, yes or no, should the employee be fired?

Mr. SNYDER. He should be disciplined.

Senator KASTEN. He should be disciplined?

Mr. SNYDER. Yes.

Senator KASTEN. But not necessarily fired?

Mr. SNYDER. Well, sure, fire him for a few days, fire him for 30 days, 60 days. Give him some time off.

Senator KASTEN. Laid off for a couple of weeks maybe and then rehired?

Mr. SNYDER. That is the reason I do not think the FRA needs authority to fine employees, because the carrier and the unions will take care of this.

Senator KASTEN. In the testimony that we heard a couple of weeks ago in the Transportation Appropriations Committee and then again today, there is a basic question that a number of people have, and that is why is the safety atmosphere different in the cab of a locomotive than it is in the cockpit of an airplane?

In other words, why is there evidently in the cab of a locomotive a kind of an understanding of everyone that if you tape a switch or if the switch—if the whistle is taped—maybe you did not tape the whistle, but you can tell pretty quickly whether it is working or not—that there is a general atmosphere in which it is accepted behavior to have these switches disabled, maybe not sabotaged?

On an airplane, they would not take off if they found out that a certain button or light or whatever did not work. Why is it that we do not have that same peer pressure, if you will, at work in the cab of a locomotive that we do in an airplane cockpit?

Mr. SNYDER. Well, the engineers do not have the authority. We have previously addressed this before the Congress in the House committee.

Senator KASTEN. The engineers do not have the authority to what?

Mr. SNYDER. To let the engineer refuse to move the engine. After he checks his engine over, if there are some unsafe devices there, whether it is a taped over a whistle or not, he can refuse to move

the train he cannot do it now. If you give us that right by legislation we can correct many safety problems.

Senator KASTEN. You are saying if an engineer reports a safety device which has been disabled, he still would be forced to go out by the company?

Mr. SNYDER. Sure, He would be disciplined if he does not.

Senator KASTEN. I would very much want—that is something—

Mr. SNYDER. We have requested legislation to allow the engineer to refuse to move a train until the defects are repaired.

Senator KASTEN. We want to follow up on that particular question. But of course, we also want to follow up on the other, and that is that the engineer in fact is the one that is doing the disabling.

Mr. SNYDER. Those are good questions. Every day a freight train goes out with hazardous materials. Many times after the car inspector might put a defect tag on a car, such as the brake being down or the shoes are bad an official will tell the crew: Take that train and get it on out of here, so the railroad can get it to the next point.

Senator KASTEN. We are going to have an opportunity, but let me just ask a final question, Mr. Chairman, and I see that my time is up.

Mr. Riley has said—and I am combining testimony from a couple of weeks ago with some today also. He said, while we can penalize a company for designing a bad system, not maintaining its equipment, or putting in bad equipment, if an employee tampers with equipment we cannot reach the employee.

And he goes on to say in effect that he ought to have the same authority over both the industry and the employees that the FAA does, because you constantly hear the company telling you it is the employee's fault and the employees telling you it is the company's fault. The truth of the matter, in his words, is that "in thousands of instances each is right and each is wrong."

Why do you believe that the FRA should not have the same authority over the company and the employees?

Mr. SNYDER. They do. But let me finish that other question you raised. The train crews that operate these trains, whether it's passenger or freight service, everyday, they get train orders and they repeat that to whoever's in that cab.

You don't have all the safety devices on a locomotive that you have on a plane. We don't run them fast enough some time.

Senator KASTEN. Well, we'll follow up on that. If there are instances in which the engineer said the safety device doesn't work, obviously, the company is at fault, and we're going to follow up on that independently with investigations we will have.

But answer my other questions. Why do you believe that the FRA should not have the same authority that the FAA does, understand that—and here's a perfect example—that in certain cases it's the company telling you it's the employees' fault; and in other cases it's the employees telling us it's the company's fault—shouldn't we be consistent and give the FRA the authority over both the company and the employees?

Mr. SNYDER. I think they already have that authority, Senator. But do you want to elaborate on that?

Mr. MANN. Well, Senator, there are a couple of points I want to clear up.

One is, is just what goes on out there. I don't think that's really been brought to the Committee's attention.

What you have is a situation where trains regularly, not just hit and miss, are not being inspected. The carriers require that in their operations.

But the Federal Railroad Administration doesn't do anything about it.

Senator KASTEN. I'm asking a different question.

Mr. MANN. No, you're not, because it all relates to imposing fines or penalties on someone. Let's assume there's a train out there with many defects in it.

The railroad's management is forcing the railroad employees to take that train with these defects in it. Now, are you suggesting that the employees should be penalized for that?

Senator KASTEN. No, the companies should be penalized for that. And I think one of the things that's going to happen, that you're going to see coming out of this committee, is a much greater push toward the FRA imposing some of the kinds of penalties that we just saw the FAA impose on Eastern Airlines.

And we saw that. And they thought about taking it to court. They decided not to. And there was a tough attitude.

But go back to our example. We've got this train loaded with defects. We've also got an engineer or someone else on the train that puts a wrench on a safety device or tapes up a whistle.

I think that that also is an area that we better get tough with, because we don't have the atmosphere, evidently, in the locomotive cab, that we do in certain other modes of transportation.

We've got to go both ways. And it seems to me that you all are saying, just go one way. And I'm asking you why the FRA should be different than the FAA, I guess.

Mr. MANN. Well, if someone wilfully tampers or sabotages, there are, Federal criminal laws, directly related to the railroad industry which would impose an individual fine or indeed imprisonment.

Senator KASTEN. Are those laws any different than would be appropriate in the airline industry on sabotage industry?

Mr. MANN. They're similar.

Senator KASTEN. Therefore, shouldn't the FRA have the same authority that the FAA does? It seems to me we've got exact parallels except for the regulating agency only can work with half of the problem.

Mr. SNYDER. Providing, Senator, they carry out these other regulations. If you inspect an engine before it leaves, let the engineer inspect to see if that train's been properly inspected.

Senator KASTEN. You bet. And penalties to companies when we find problems. Absolutely. But I'm trying to—I understand you are opposed to making the FRA parallel in its ability to enforce, parallel to the FAA.

And I don't understand why you should be opposed to that. I don't see what the difference would be.

Mr. MANN. Senator, the FRA would have you believe they are hand-tied. They can't do a thing about any issue. That is just not so.

They can issue emergency orders. They have extensive enforcement authority that would require an employee to perform duties.

But what good does it do to fine the employee $1,000 or whatever; he's going to be fired first.

Senator KASTEN. I'm not getting an adequate answer to my question. Let's pretend they are hand-tied, or maybe they're not tied. Whatever.

What's different about the situation in the railroads that would make it right for us to limit the FRA's authority with employees that isn't the case in the airlines, where the FAA has the authority to go both against the company and the employee?

It seems to me there is no critical difference between railroads and airlines. We're interested in safety. We ought to be going after the companies with tough fines and with inspections, and we ought to be going after the employees, if those people in fact are sabotaging safety devices or doing other things they shouldn't be doing.

Mr. MANN. Provided you give the railroad engineer the same authority as you give the pilot on planes not to take that train out with defects in it, we could not oppose it.

Senator KASTEN. Thank you.

Senator EXON. Thank you, Senator.

I have just one question before we move on to the last panel.

When you started out this morning, Mr. Snyder, you indicated that you were prepared to answer any questions with regard to what the views of your organization were on drug testing, random or otherwise.

I asked the question. You were good enough to respond. You have whetted my appetite, Mr. Mann, by indicating that you think we would be very pleasantly surprised by what you intend to present to the hearing of the full committee on Friday next.

Could you kind of just sum up, understanding that there is two or three days to go and you could make some changes in that, could you outline, in keeping with the positive statements that were made about this by Mr. Snyder, what does your drug testing program basically entail, and do you agree with random drug and alcohol testing as a part of your plan?

Mr. MANN. A qualified approval, Senator. We will be proposing a preliminary objective type test procedure before you do the invasive urinalaysis or blood test on the individual.

By that, I mean there would be objective signs evaluated, such as pulse, eyes, temperature, things of that nature. The preliminary test would include also steps similar to the kind of test that a police officer would initially perform when he stops an automobile driver suspected of being under the influence.

If the person fails that test, in the view of the certified technician, then the random invasive type test would be permitted.

That way, you satisfy the constitutional objection, and you accomplish what everybody is after—a safe railroad operation. In addition you protect those truly innocent employees.

Senator EXON. Thank you all. I'll be looking for the details of that on Friday.

We appreciate very much your being here, Mr. Snyder.

Mr. SNYDER. Anytime, Mr. Chairman, we're ready and willing to help work with your committee in any way.

Senator EXON. Thank you very much.
Mr. SNYDER. Thank you very much for your time.
[The statement follows:]

STATEMENT OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS

Good morning. My name is John Woischke and I am the Legislative Liaison for the Brotherhood of Locomotive Engineers (BLE) and I present this testimony on behalf of BLE President R. E. Delaney. The BLE is the oldest heavy-industry labor organization in North America representing approximately 30,000 locomotive engineers in the United States and Canada.

I want to bear witness to certain facets of rail operation in which the BLE holds a particular interest, especially because the locomotive engineer is the employee who shoulders the primary responsibility in the operation of today's railroads yet, unfortunately, receives the greatest amount of blame when things go wrong, and seldom receives the credit due him.

RESPONSIBILITIES OF THE LOCOMOTIVE ENGINEER

As everyone in the railroad industry is aware, technological advancements have created major changes for the operation of trains on America's railroads. The statistics demonstrate an increasing ton-mile movement of commodities and a continuous decrease in the number of railroad operating employees. This very clearly means that there is more responsibility to the job of operating a train as the trains have grown longer, weigh more, travel faster and carry an increasing number of hazardous materials. Every locomotive engineer operating a train has in his or her hands, what could become a very lethal instrument if there is error, negligence or willful disregard of the operating rules.

These changes have been spawned in large part by the deregulation of the rail and transportation industries and the changes for more efficient operation which were mandated by the resulting increase in competition. Unfortunately, these are changes which have also resulted in a reduction in safety and an increase in stress in the workplace due to a decrease in crew size or a shift in the location of the normal crew to a position in the controlling locomotive unit on the train and thus a disproportionate increase in workload.

Often during the operation of a train, there are many simultaneous demands which are made on the engineer. In reality few, if any, people are capable of receiving all of this data, placing a priority on it, and deciding on the proper course of action without creating a situation which could be very dangerous and, in all cases, is stressful.

Knowledge of and compliance with railroad operating rules is far different in practice than the public or the government believes. While rules compliance is expected, it is extremely difficult to run a railroad and obey all of the operating rules at the same time. Management is aware of this fact. In fact, management at times encourages the violation of safety rules and, in some instances, employees will willingly violate operating rules in order to expedit traffic and to receive high grades from management. An engineer who obeys these rules in the literal sense cannot be too effective or efficient, yet if he does not obey them, he/she could be subject to discipline. This is a serious dilemma because if an accident takes place, the rule will be invoked and the employee will be subject to discipline.

As if this pressure is not enough, the engineer must also continuously monitor radio transmissions, sorting out only those communications that apply to his train, yet continue to operate his train in a safe and effective manner.

I. RAILROAD SAFETY

A. Licensing and Certification

It is a well known fact that in the railroad industry, locomotive engineers are required to pass more regorous physical exams, especially with respect to eyesight and color vision, than any other member of the operating crew. In addition, he/she must pass more thorough written rules examinations and be qualified on machinery and air brake mechanics above and beyond the requirements of any other member of a train crew.

These requirements, coupled with practical hands-on operating experience, have provided the railroad industry with a very versatile operating employee. Regardless of how long a person observes the operation of a train with respect to physically controlling and operating it in compliance with the rules, it is this organization's

contention that no one can really acquire the necessary skills of being a locomotive engineer without some form of on-the-job train handling

Probably the most tragic event in the rail industry in the last thirty years has been the removal of the locomotive fireman. In fact, the record shows that while the U.S. and Canadian railroads said there was no need for a fireman, we now have several people assigned to the head end performing the duties that were the fireman's responsibility. He was a man in training to become a locomotive engineer, who shared in the observation and compliance with the rules, and contributed to the safety of train operations. He was a second pair of eyes and ears, and communicated with the engineer regarding train handling techniques. He was available to provide relief for the engineer because of the call of nature or, in other instances, by temporarily taking over the controls for the locomotive engineer which provided the exposure to properly prepare a man to assume the role of locomotive engineer.

Even though there are many federal laws, rules and regulations governing the behavior of the locomotive engineer, there are no rules involving or defining criteria which must be met to operate as a locomotive engineer, therefore, we are making the following recommendations.

1. Require both a qualified locomotive engineer and a coengineer to be in the locomotive operating compartment of any train which is in service on the main track or between terminals. Of particular importance and need is the second qualified man in today's passenger trains, especially the high-speed passenger trains in the Northeast Corridor.

2. Every company, association, person or other entity which employs or permits any person to operate a railroad locomotive by any means within the United States shall issue to such person a federal locomotive engineer's operator permit. Such permit shall include the engineer's name, address, description, date of birth and a certification that such person is qualified as a locomotive engineer.

3. A federal locomotive engineer's operator permit shall only be issued to any person who is a trained locomotive engineer or motorman promoted from the position of fireman, co-engineer, reserve engineer, assistant engineer, apprentice engineer, helper or hostler.

4. Every locomotive engineer shall, when on duty, have in his possession a federal locomotive engineer's operator permit, and he shall exhibit such permit on demand of such policemen and peace officers, who may make such demands, in accordance with applicable law(s).

5. No company, association, person or other entity shall operate, or cause to be operated from the control cab, any locomotive on any common carrier by rail within the United States with more than three persons in the operating compartment of such locomotive, one of whom shall be a qualified locomotive engineer with a valid locomotive engineer's license; provided, however, that an assistant engineer, fireman, apprentice engineer, helper, student engineer or hostler may operate the control cab controls in the presence and under the discretion of a qualified locomotive engineer with a valid federal locomotive engineer's license.

6. There shall be maintained by the FRA a national data collection system listing all federally licensed locomotive engineers. This record will include date of hire, date of promotion, current geographic qualifications, and other pertinent railroad employment data. A copy of any information added to a person's record will be furnished to the individual for his/her information. If a person has any comments concerning a notation on their records, such remarks will be submitted to the FRA, in writing, for inclusion on the record.

7. A locomotive engineer training program should be established similar to that as provided for under the Cooperative Agreement No. DTFR53-80-X-00150 [45 U.S.C. s (a)] between the Federal Railroad Administration and a Joint Venture (Participant) made up of the Seaboard System Railroad (formerly L&N) and the Brotherhood of Locomotive Engineers (BLE). A copy of the phase II work statement is obtainable from either the Federal Railroad Administration, Brotherhood of Locomotive Engineers or Seaboard System Railroads and contains a model program which when completed:

a. will provide training curricula which are acceptable and readily usable by the majority of other railroads;

b. has the capacity of significantly improving the train handling performance (especially in regard to safety) of both new and experienced engineers (as compared to methods now being applied);

c. has identifiable "advancements" over current engineer training programs of those individual carriers now recognized as "leaders" in this respect; and

d. helps to define relationships, explains the respective roles and contributions of various different approaches, methodologies, training aids, and simulator devices

now employed and/or planned to be utilized by the rail industry in training new engineers or upgrading present ones.

The "model" program developed in Phase II of the work should produce a product which has attributes that definitely meet the objectives of a, b, c, and d above.

B. Locomotive inspection

If during the locomotive engineer's inspection of his motive power prior to commencing work, he or she finds a defect which renders the locomotive unfit for service according to standards set forth by the Federal Railroad Administration (FRA), the engineer may not refuse to operate that locomotive without subjecting himself to discipline and possible discharge. If, on the other hand, the defect is noted on the work report and the defect is serious enough to report it to the FRA, the employee risks retaliation on the part of the employing carrier or, even worse, a lack of response on the part of the FRA and its inspection forces.

The BLE recommends that the Railroad Safety Act be amended to include a required checklist of times that must be operative, sanitary and/or provided such as first aid kits, flagging equipment, etc. Such list must have clear-cut guidelines that will allow an engineer to refuse to operate a locomotive if, upon inspection, any given requirement is discovered not to meet the specifications.

C. Human factors study

In the past twenty (20) years, there have been literally billions of government dollars allocated to the railroad industry which have been used by the companies to upgrade track and equipment and sever employees. Limited funds have been appropriated to study industry working conditions, environment or the responsibility placed on individual railroad workers. Search of public data banks readily reveals that there has been virtually no involvement by academic, government or private entities in addressing human factors in the railroad industry such as stress, effects of noise, hearing problems, rest and random shift work, performance decrements and circadian rhythms, night work, tragedy and aftercare, etc.

In a pioneering study, the BLE employed an outside firm to study stress and its effects on our members who work alone operating Amtrak's high-speed passenger trains in the Northeast Corridor. Although this study was limited to a small segment of railroad employees and only addressed a subset of working conditions, it was reviewed by both Amtrak and the General Accounting Office, and all three parties concur that further study is needed.

Amtrak, using the club of other congressionally mandated requirements to cut costs, has negotiated agreements with the BLE and other rail unions that have substantially changed the wages and working conditions of employees.

The Brotherhood of Locomotive Engineers has expressed concerns about the Northeast Corridor situation that go far beyond wages, everyday working conditions, and minor annoyances of the job.

it is truly regrettable that a tragedy of the magnitude of the recent Amtrak accident is finally drawing any attention to our concerns. Typical of Amtrak's response when we first raised the issues about stress was the comment of Amtrak Chairman W. Graham Claytor, who told a reporter that Northeast Corridor service is "no more stressful than a 10 mph local where they can stop and do some coon hunting." To this day, there has been no indication by Mr. Claytor that he feels any differently about the stress issue.

BLE recommends that provisions be made by Congress, in considering Railroad Safety Legislation, to allocate $800,000 to initiate a multi-discipline human factors study in the railroad industry. Such a study would have to be conducted in two phases—one of problem-defining and the other-problem-solving. This figure was derived by considering the scope and various issues to be considered in the first phase and by projecting from our experience with the BLE Stress Study. It is anticipated that more monies will be needed for the second part of this study and a guesstimate would be in the ball park of $1,500,000.

The ideal target group to receive such funding would be the National Institute of Occupational Safety and Health (NIOSH), as this federal agency is independent and certainly has the professional talent to undertake a study of this magnitude. In that this endeavor is novel and because of the immediacy of need for an in-depth analysis and not some quick-fix, it is imperative that we seek the aforementioned funding.

D. Mark off after tragedy and professional counseling

There are situations in the workplace which interfere with the job performance of locomotive engineers. One thing that is certain is that recent involvement in a seri-

ous injury or death of a fellow crew member, person(s) at grade crossing accidents or pedestrian(s) trespassing on the property is a precursor to job stress. Many engineers have a very difficult time coping with the short-term effects and long-term memories that affix a lifetime imprint consistently brought to consciousness whenever they operate another train past the place of the tragedy or see a person on the tracks.

Actions required of the engineer when there is a serious accident can increase the engineer's stress level. Such actions should be reviewed and altered, as necessary, to facilitate stress reduction.

Requiring an engineer to inspect the engine when a person or vehicle is hit may make sense technically, but it can be highly traumatic psychologically. This is especially true if bodily remains are splashed over the engine.

From a psychological point of view, it may be dangerous to require an engineer to continue to operate the train after a serious accident. Continued operation not only may compound the trauma for the engineer himself, but also it can result in unsafe or inefficient job performance.

The Brotherhood of Locomotive Engineers recommends that the Railroad Safety Act be amended to address the issue of a locomotive engineer who has been involved in a tragedy. The engineer, if he/she chooses, should be permitted to relinquish control to another engineer without being harassed or without suffering a loss in pay. Guidelines must be established to permit this and post-traumatic stress reduction programs should be made available to engineers attempting to cope with the aftermath of major accidents in which persons have been maimed or killed. This type of program could certainly be incorporated into the carriers' Employee Assistance Programs.

In all such events, it should be mandatory that railroad officials and/or police officers at the scene of any accident involving the engineer should ask the engineer if he or she is O.K. and whether or not they feel up to continuing their tour of duty.

E. Extensive emergency training

The BLE has been active in and supportive of the OPERATION LIFESAVER program, however, there is no comprehensive training effort on the part of the nation's railroads which is aimed solely at the locomotive engineer.

In the spring of 1984 at McBee, South Carolina, there was a disastrous collision involving an Amtrak train and a gasoline truck which is indicative of the death and destruction an engineer can be exposed to every time he/she takes charge of a locomotive. Our files contain many very gruesome photographs of similar tragedies which attest to the fact that these incidents have been occurring for a long time.

The BLE requests that the Railroad Safety Act be amended to provide that all railroad operating employees be given extensive emergency training. With respect to accidents involving hazardous materials, train employees should be knowledgeable to not only protect themselves personnally, but know how to protect the public and to provide assistance to energency response people.

There should also be federal legislation governing the following items with respect to hazardous materials:

1. Relationship of Loads.
2. Train Profiles.
3. Car Loading Specifications.
4. Improved Identification Methods for Hazardous Material Railcars.
5. Protective Clothing, Gas Masks, Sensors.

For a comprehensive explanation of these items, please see attached BLE Exhibit I entitled, "Brotherhood of Locomotive Engineers Position Paper Concerning the Transportation of Hazardous Materials on the Railroads—August 8, 1986".

F. Funding for State PUC Railroad inspectors

As stated in many public forums by our representatives and by RLEA representatives, the BLE is not convinced that the FRA is as effective of a watchdog as intended by the lawmakers who created the agency.

Therefore, the BLE strongly recommends that the United States Congress continue and even consider increasing funding for state PUC inspectors so that they can continue the enforcement of laws designed to protect railroad workers and the general public. These state inspectors help to offset the shortage of Federal inspectors available to cover the large amount of motive power, plant and equipment in operation in the United States, and they look out for the interests of their respective state and simultaneously see that the FRA is doing its job. Eliminating these few inspectors removes an effective adjunct and possible overseer of the FRA.

II. HOURS OF SERVICE

A. Maximum number of required tours of duty

Thus far we have concentrated on safety requirements concerning railroad personnel, equipment and hazardous materials. While these aspects are of increasing importance, the locomotive engineer has a greater responsibility when operating trains laden with dangerous cargo.

Current national rail safety provisions are, in fact, no more effective than 19th Century "horse and carriage laws" governing a world of 21st Century trains. Locomotives are faster and more complicated today than when regulations dealing with railroad safety were originally passed. The safe operation of a locomotive requires engineers who are mentally, emotionally and physically alert—not men and women worn down by excessive hours or handicapped by inadequate training to deal with hazardous materials and emergency situations. This is inviting disaster.

There is a definite need to revise the current law which permits rail engineers to work 30 to 40 and more consecutive days—often more than one tour of duty in a 24-hour period with the carriers prohibiting a day off. As these strings of continuous work days get longer, the possibility increases that an individual will mix his/her personal and/or social life with their work activity. In today's society where leisure and recreational time is of major significance to everyone's lifestyle, railroad employees must have designated days off in which they can plan their personal time.

The Brotherhood of Locomotive Engineers recommends that the Hour of Service Act be amended so that a railroad operating employee will not be required to work more than 22 tours of duty in any given 30-day period.

B. 8-Hour notification period

Like a truck driver forced to drive excessively long distances in a short time, thousands of engineers must report for duty in a state of fatigue—their senses dulled, their body clocks thrown out of sync, their personal lives disrupted. At the same time, the responsibilities of engineers to fellow citizens have been heightened, and the irony and dangers of this situation ignored.

Whenever locomotive engineers return home from a trip, they attempt to resume a normal living pattern such as sleeping at night, eating at the established meal times within their households, participating in family activities and even enjoying some social life. Unfortunately, most people have no idea when they are going to be called to work and often are not properly rested to assume a 12-hour tour of duty when called, however, they report. Consequently, some crew members become inattentive on the job and the engineer, who may need assistance more than ever, either has to keep someone else alert or forget about them in an effort to concentrate on his or her job as the task requires 100% of a person's attention.

In recognition of the fact that it is impossible for an employee to remain in an around-the-clock state of readiness to assume a 12-hour tour of duty with a two-hour notice, the Brotherhood of Locomotive Engineers requests that the Hours of Service act be amended to require that every railroad operating employee who works on a call basis be given an 8-hour notification. This would eliminate the guessing game, allow people time to get a reasonable amount of rest, eat properly and report for work. Also, upon notification, employees would abstain from the consumption of any alcoholic or mind-altering substances.

Locomotive engineers handled freight trains for 347 million miles over 145,764 miles of track in 1985 (AAR Railroad Facts, 1986). The majority of these trains were laden with hazardous materials, many with thousands of tons of very deadly commodities. These trains are operated 24 hours a day through the backyards of every major population center in the contiguous 48 states.

It is time for the United States Government to take into consideration the changes in technology, train lengths, weights and speeds, and the vastly increasing threat of new chemicals and the dangerous commodities produced and shipped on our railroads. All of these changes, coupled with a major decrease in railroad employees, result in multiple-factor workloads and responsibilities placed on a small number of individuals.

Senator EXON. Our last panel will please come forward now.

Mr. William Dempsey, President of the Association of American Railroads. Mr. Graham Claytor, Jr., President and Chairman of the Board of the National Railroad Passenger Corporation (Amtrak). And Mr. Richard B. Hasselman, Senior Vice President, Operations, for Conrail.

Gentlemen, will you please come forward.

We welcome you. I'm sure you've all been here before. I'm sure you'll all be here again. We're delighted to have you this morning.

I wish to apologize, also, it seems to me that with the many hearings that we've held, that usually it is this panel that has to be the most patient.

I think you were all here when we started. You are all here now. Please proceed in any fashion and in any order that you wish.

STATEMENT OF WILLIAM H. DEMPSEY, PRESIDENT, ASSOCIATION OF AMERICAN RAILROADS

Mr. DEMPSEY. Thank you, Mr. Chairman.

It's good to be with you again. It's not a happy subject, of course, that we discuss this morning, when we think of a tragedy like the Chase accident, which fills the entire industry with dismay and sorrow.

And of course it is entirely appropriate for the Congress and the FRA and all interested parties to consider what moves can be made to improve the safety of operations on the nation's railroads.

I will rely, however, upon the background that Mr. Riley gave you with respect to the data. The fact is, and it's displayed in my statement as well, that we've had a remarkable improvement in rail safety over the last decade in every category. No matter what you look at, whether it's fatalities, or grade crossing accidents, or train accidents or lost time injuries, the figures are really quite astounding.

And I would just say one thing in addition. One of the members of the panel mentioned the operation of freight trains involving hazardous materials. And of course that is a matter of abiding concern. But the fact is that the railroad mode is by far and away the safest mode of transporting hazardous materials.

We haven't had a single fatality in connection with the movement of hazardous material since 1980. So our record there, too, has been quite good.

So we start not from ground zero by any means. But against a background of what I think is demonstrably a very, very fine safety record.

The questions that relate in particular to the Northeast corridor, such as automatic train control, and the question of freight operations, I of course will leave to my colleagues.

I will have to join Mr. Riley in respect of labor's proposals, because we've not seen their statement, and I would like to have the opportunity to respond if I might, Mr. Chairman.

As to the issues that others have discussed today, I agree with Senator Pressler that the key question is drug and alcohol control.

While we have a substantial problem in the rail industry, I don't think there's any reason to think that it's any greater than it is in other industries. But we are concerned with the public safety in a very important way, and we need effective means of dealing with this problem.

The rail industry has historically had the most stringent rules with respect to drug and alcohol abuse in American industry—our so-called rule G. But we need means for enforcement.

And we've been frustrated in the past by arbitration decisions indicating that our opportunity, as individual companies, to test, were virtually nonexistent.

FRA and DOT stepped out in front against that background, and their rules and regulations are a notable improvement.

We supported in the proceedings before FRA, random testing for drug and alcohol, and we continue to support that. And we're delighted now to see that the Department shares that view.

It is an invasion of privacy. The rules do have to be worked out very carefully. But we're prepared to work with the FRA of course in doing that.

Just in conclusion, I'll say that if the committee thinks that licensing of engineers is a good idea, we'll work toward that end as well.

We think that our programs are good, but whatever you think is in the public interest, we'll support. And we do support DOT's request for enforcement authority with respect to individual employees as well as companies.

Thank you very much, Mr. Chairman.

[The statement follows:]

STATEMENT OF WILLIAM H. DEMPSEY, PRESIDENT, ASSOCIATION OF AMERICAN RAILROADS

My name is William H. Dempsey and I am President and Chief Executive Officer of the Association of American Railroads. The railroads which are members of the AAR employe 94 percent of the workers, produce 97 percent of the freight revenues and operate 95 percent of the line haul trackage in the United States. The Association of American Railroads welcomes this opportunity to participate in the subcommittee's oversight hearings on rail safety.

While we proudly point to the overall improvement in rail safety over the past decade we deeply regret the distressing circumstances of recent accidents. Railroads do not willingly tolerate unsafe conditions. Safety is a continuing matter of profound concern to all members of the railroad community. Any accident is deplored by the industry and any injury or fatality is regarded in the most personal sense by the management and employees of railroad companies.

Along with the remorse there is also frustration when such tragedy strikes against a background of a dramatic improvement in rail safety over the past several years. These improvements are reflected in virtually every category of accident statistics. I have attached to this statement an analysis of the available rail safety data and would like to highlight the improvements from 1978 to 1985, the last year for which complete statistics are available.

Between 1978 and 1985 the number of employee fatalities and employee injuries per million man hours worked and train accidents per billion gross ton miles declined dramatically.

Employee fatalities per million man hours worked declined from 0.12 in 1978 to 0.07 in 1985.

Employee lost-time injuries per million man hours worked declined from approximately 39 in 1978 to 19 in 1985.

Main line derailments per billion gross ton miles decreased from 2.1 in 1978 to 0.8 in 1985.

Total railroad related fatalities decreased 37 percent from 1978 to 1985.

Railroad employee fatalities decreased from 131 in 1978 to 52 in 1985; a reduction of 60 percent.

Total railroad related injuries decreased from almost 64,000 in 1978 to under 30,000 in 1985; a 53 percent reduction.

Reported train accidents decreased 70 percent from 1978 to 1985.

Railroad employee fatalities in 1985 were down almost 27 percent from the 1984 figure.

Reported casualties to rail employees in 1985 were 11 percent lower than 1984.

Railroads have always been the safest mode of surface transportation for the carriage of hazardous materials and there has been a significant decrease in hazardous material incidents.

The number of cars that released hazardous materials in train accidents decreased 53 percent from 1978 to 1985.

There have been no fatalities resulting from rail transportation of hazardous materials since 1980.

While the reports for the year 1986 have not been tabulated or normalized for man hours worked or ton miles operated, some projections for that year based on the first 10 months have been made. These preliminary projections show that while the total number of employee fatalities and the number of employee fatalities in train accidents were higher in 1986 than 1985, these 1986 levels were below all other previous years and still reflect the overall downward trend in employee fatalities. These projections also show that while employee injuries in train accidents rose in 1986 over 1985, total employee injuries and illnesses declined significantly.

The dramatic improvement in railroad safety is primarily due to the railroads' ability to concentrate on programs which result in safer railroads from the ground up. The significant improvement in railroad physical plant since 1975 is reflected in the record expenditures for capital improvements and maintenance. Class I railroads alone committed almost $4.3 billion in 1985 for capital improvements and maintenance. This follows eight years of record spending for capital improvements. Some $3.1 billion of the 1985 funding went directly for maintenance of way and structures while $5.4 billion was spent for maintenance equipment. New rail laid in 1985 totaled 496,039 tons, bringing the total for the five year period—1980–1985—to 3.9 million tons. In addition, 20.7 million crossties were installed in 1985. Over the five year period ending in 1985, almost 140 million ties have been laid—the equivalent of more than 46,000 miles of track.

In the aftermath of an accident every effort must be made to identify the causes and to develop corrective actions which can be taken to prevent a reoccurrence. As to the necessary immediate responses to the recent Amtrak-Conrail accident I must defer to Amtrak and the users of the Northeast Corridor on the matters identified by this Subcommittee such as diversion or traffic and automatic train control. However, there are general recommendations for legislative or regulatory action that have been made which I would like to address.

DRUG AND ALCOHOL TESTING

The drug and alcohol regulations promulgated by the Federal Railroad Administration have been in effect for almost exactly one year. Those regulations reinforce the long-standing railroad rules prohibiting the use of alcohol or drugs while on duty and prohibiting the performance of duties while under the influence of drugs or alcohol. The regulations also require toxicological testing following accidents and authorize railroads to require that employees undergo testing following minor accidents and violations of operating rules. The FRA rules also require that the railroads adopt and implement employee assistance programs and mandate preemployment drug screens.

At the time these regulations were being considered, the Federal Railroad Administration was on the leading edge in the development of methods for the effective control of drugs and alcohol abuse in the work place in private industry. Unfortunately the FRA regulations have been under a cloud of litigation for the past year. The Railway Labor Executives Association has attacked the regulations in the United States Court of Appeals for the Ninth Circuit. Additionally the RELEA has brought actions against individual railroads seeking to nullify certain aspects of their drug and alcohol testing programs. Such legal actions have had a chilling effect on the intended implementation of the regulations.

Based on recent events legislation has been introduced which would require that FRA adopt rules mandating random toxicological testing for evidence of alcohol and drug use. Currently railroads are prevented from unilaterally requiring random testing. It is clear that the railroads' enforcement programs would be enhanced if they were authorized to conduct drug and alcohol testing on a random basis. There can be no doubt that random testing would have a beneficial deterrent effect. Indeed, during the course of the FRA's rulemaking proceeding the railroads asked for the authority to administer alcohol testing on a random basis.

LICENSING OF LOCOMOTIVE ENGINEERS

On its face the proposal to require the Federal licensing of locomotive engineers appears to be reasonable. Commercial and private airline pilots and merchant mari-

ners are licensed—why not railroad train operators? Without further analysis the proposal sounds reasonable and we do not oppose it. But, due the circumstances that prevail in our industry, I would say that we do question the need for, and benefit of federal licensing. Some effort must be made to take a look at the cost of creating a federal bureauracy to administer and monitor training, testing and licensing and to examine the existing training, testing and certification programs.

The aviation and maritime industries have never confronted the need to qualify their pilots or mariners in the absence of a federal licensing regime. The railroads have operated for about 150 years without a federal licensing program and have thus developed their own training, testing and certification programs. Faced with the need to have highly capable locomotive engineers the railroads have individually established their "licensing" programs. While each railroad operates independently the licensing or certification programs are surprisingly similar.

The proper qualification of locomotive engineers is extremely important and the railroads have carefully structured their qualification programs to include training, testing certification, re-testing, re-training and proficiency observations.

Candidates for locomotive engineers are generally selected from train service employees who demonstrate dependability, competence in their jobs and a willingness and ability to undertake additional responsibility. These candidates must past company physical examinations that involve standards for sight and hearing, as well as cardiovascular, respiratory and nervous systems. Physical re-examinations are scheduled periodically thereafter and upon return to service following furloughs.

Locomotive engineer candidates normally undergo a combination of classroom training that usually involves computer simulated trips with a "train dynamics analyser." The trainee must attend air brake and train handling classes and pass examinations. They also must attend operating rules classes and pass an examination on the company's book of operating rules. This involves total familarity of the wayside signal system. Similarly they must demonstrate a knowledge of the company's safety rules and policies as they apply to the job.

Even after the extensive classroom, field and train-handling instructions, the candidate is not certified as a locomotive engineer. The candidate is required to make a specified number of trips over specific territory for which he intends to be qualified and demonstrate a familiarity with the physical characteristics of that segment of the railroad including grades, curves, signal and defect detector locations, track layout, road crossings, industries and restricted clearances.

The final step is to operate a train under the supervision of a road foreman or other qualified supervisor. Even then the candidate is only qualified as a locomotive engineer on the segment of the line for which he was tested. Qualification to operate on other segments or divisions of the railroad can only be obtained if the locomotive engineer makes a set number of supervised trips over the new segment or new division.

Following certification, locomotive engineers must attend annual or bi-annual rules classes and pass examinations. Additionally, the railroads conduct operational tests and inspections. This periodic retraining and retesting ensures that the locomotive engineers have retained the necessary qualifications.

Importantly the railroads maintain extensive records on each locomotive engineer. The records contain the essential information on training, testing and qualifications. The employee receives a written acknowledgement of his authority to operate a locomotive.

Significantly, each railroad takes great care to train and test locomotive engineers from other railroads which might operate over its lines. Where one railroad has trackage rights over another railroad, for example, the "foreign" locomotive engineer would be required to demonstrate a thorough knowledge of the operating rules, signal system and the physical route characteristics of that segment of line of the "home" road over which the "foreign" train is to be operated.

While there is no Federally imposed licensing requirement for locomotive engineers, it is misleading to suggest that locomotive engineers are not trained, tested and certified. Indeed, the individual railroad locomotive engineer qualification programs represent a very effective licensing system.

The railroads support and share the objective of assuring that the operators of trains are trained, have the necessary qualifications and have satisfactorily demonstrated train handling ability. We think the railroad certification systems do that and more!

Senator EXON. Thank you, Mr. Dempsey.

Mr. Claytor?

STATEMENT OF W. GRAHAM CLAYTOR, JR., PRESIDENT AND CHAIRMAN OF THE BOARD, NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)

Mr. CLAYTOR. Thank you, Mr. Chairman.

In my prepared statement, I list some eight areas in which I have suggestions and discuss them in some detail.

What I will do this morning is merely refer to those eight categories, and give very briefly my conclusions.

First on the accident, Amtrak was the victim, not the perpetrator. This resulted from an almost incredible series of successive rule and signal violations that are set out in detail, and I won't go into that further.

Second, what we're trying to do now is find out how to prevent not only this type of accident but other accidents. And the first thing I want to endorse is the use of automatic train speed control on all locomotives and self-propelled vehicles on the Northeast corridor.

We have, presently, on all Amtrak passenger engines a most advanced system. It's quite true that you might need to make some changes in the method of braking when you put them on freight trains, but I'm perfectly satisfied that that can be handled.

So it ought to be on all freight trains. It ought to be on all commuter trains, on the corridor.

Now the NTSB has suggested that we should do that. We really don't have the clear authority to do that. We have a certain amount of authority to insist that people who use our tracks have reasonable safety provisions, but our experience in the past has been that somebody or the other will take us to arbitration and say this is an unreasonable requirement.

We need a regulation on this. We will do everything we can, but we need a regulation. In fact, part of the Northeast corridor is—between New York State and New Haven—is owned and operated by the State of Connecticut and run by the Metro North Commuter Agency. So we don't have any control over that part of the corridor at all.

So we need regulation on this, and I think we'll get it.

Third, the separation of freight and passenger trains. It is not feasible to move all the freight off the corridor. I think everyone recognizes that.

However, it is feasible to move a major part of our through freight trains onto parallel lines, and to take the rest of the freight service, and operate it primarily between the hours of 10:00 p.m. and 6:00 a.m. when we have relatively little passenger business.

The object is to separate freight and passenger operations; not necessarily separate them physically, but separate them in time to the extent you can't do it physically.

We are moving on that right now. And as of yesterday morning, February 16, at 12:01 a.m., we imposed a speed limit of 30 miles an hour on all freight trains operated over the main line from Boston to Washington between the hours of 6:00 a.m. and 10:00 p.m., that is, the daylight hours.

So if you run a freight train in the daytime now, you can't run it over 30 miles an hour, and that's in effect.

Senator EXON. That is the maximum speed under any conditions?

Mr. CLAYTOR. During those hours for freight.

Senator EXON. But you couldn't even speed up to 40 miles an hour if the track were clear?

Mr. CLAYTOR. That's right. 30 miles per hour is the maximum, and the reason for that is, we don't want a freight to derail from a broken wheel or something like that, and fall in the path of a passenger train on another track.

The speed limit will make such a derailment less likely to cause a catastrophe.

We want the trains off during that period to the extent we can. But to the extent we still have them, we've got a 30 mile per hour speed limit on them, and I think that will be a major contribution.

Fourth, on engineer licensing, the next category, we think what we really need are minimum Federal regulatory standards for engineer qualification.

I think the licensing ought to be done by the railroads themselves, and they must conform to minimum Federal standards. Because each individual railroad will have some additional standards it has to impose.

One of the things that is not generally understood is, that when you're licensed or qualified as an engineer, you can't just get in an engine and run it anywhere. You can only operate it over the territory for which you've been specifically qualified.

And you go to another territory, you have to be requalified there.

The railroads ought to administer this under FRA supervision. But the FRA should set the minimum standards.

Fifth, drug and alcohol abuse. We feel the only effective thing you can do here is to have a really good system of mandatory random testing. The concept that you could tell whether or not there is probable cause by careful examination, in the case of drugs, has just plain proved not to be so, and Mr. Riley's explanation of what happened in this accident is a good example.

Now we think that it must be truly random, set by computers. It must be a test for use, not impairment. You can't really determine impairment on drugs from the test. There are great differences of technical opinion about how much drug you have to have in your system before you're impaired.

I would wipe that issue out. The only issue should be, whether or not there is definite indication of drug use. That's it.

And finally, there must be a careful urine test for the first shot, and then as Mr. Riley explained, if it's positive, you have a definitive, much more costly test, that verifies it.

Sixth, passenger care safety modifications were mentioned. We have a major program going forward with that, securing seats, seat upholstery, microwave oven restraints, and baggage racks, and we're going forward with that.

Seventh, we're asking that this committee recommend an amendment to the 4R Act which would list these safety and some other safety categories for possible appropriation under the Northeast Corridor Improvement Act.

There is already in effect an authorization for about $300 million more of Northeast corridor improvement projects, with a list of projects already in the statute.

We want to add to that list these passenger car and other safety changes, so that the automation of these items will be there. And in the event appropriation of additional NECIP money comes along, they will be able—the money can be spent for these safety features.

We're not asking for an increase in authorization or for any money at this time. We will request some NECIP money from the appropriation committee, but we want to be able to spend that money for these safety features that I've been talking about.

Eighth and finally, we endorse the FRA's desire to control individuals as well as companies, and we think that's absolutely critical.

Now, I've covered three of the four things mentioned by the National Transportation Safety Board.

The fourth one is the requirement that there be a good radio in every locomotive. We have that requirement on Amtrak right now.

If a passenger train leaving any station does not have a properly installed locomotive radio on board, he can't leave.

We want to impose that on freight and commuter people, too, but we can't control it. There's no way that we could inspect the hundreds of commuter cars and freight locomotives to be sure they have adequate radios installed.

I think that's a problem for the FRA, and the FRA should enforce it. We're not in a position to enforce it, but we do require it.

That's the end of my statement, Mr. Chairman.

[The statement follows:]

STATEMENT OF W. GRAHAM CLAYTOR, JR., PRESIDENT AND CHAIRMAN OF THE BOARD, NATIONAL RAILROAD PASSENGER CORPORATION [AMTRAK]

Good morning Mr. Chairman: I greatly appreciate this opportunity to appear before the Surface Transportation Subcommittee of the Senate Committee on Commerce, Science, and Transportation to discuss rail passenger safety as well as proposals to improve that safety and to eliminate, to the maximum possible extent, the likelihood of such tragic accidents as that which occurred at Chase, Maryland on January 4, 1987.

In the aftermath of any major transportation accident such as this, questions as to the safety of that mode of transportation are necessarily raised. First of all, I want to emphasize that travel by Amtrak passenger train today is extremly safe. The National Safety Council's "Accident Facts—1986 Edition" contains some useful comparative data on various modes of transportation for 1985, the latest year for which data are available:

Motor Vehicle Accident Deaths—45,600.

Water Transport Accident Deaths—900.

Air Transport Accident Deaths—1,300 (includes private and military flights).

Railroads—500 (includes trespassers; only 3 of 500 were passengers; only 1 passenger was Amtrak).

Other Transport—200. In comparison with automobile travel, all modes of public transportation have very low fatality rates. In 1985, in fact, Amtrak had no passenger fatalities as a result of derailments; the one passenger fatality we had in 1985 was a person who apparently jumped or fell from a moving train.

As extreme as the January 4, 1987, derailment was, we must also look at the survivability of the vehicles. There were 16 deaths among the 618 people on that train on January 4, 1987. Had the accident involved planes rather than trains, the death toll undoubtedly would have been far higher, and it most likely would have killed all passengers, crew, and possibly additional people on the ground. The survivability of train vehicles involved in a derailment today is a testament to the good work that

has been done in recent years in improving the quality of vehicle design, signal systems, train couplers, etc. With what has already been learned from this accident, additional steps are being taken to furhter enhance rail travel safety, including improvements in seat restraints, luggage restraints, food service car equipment restraints, and train movement controls.

However safe rail passenger transportation is, we can and should adopt any reasonably available measures we can to eliminate such risks of collision or derailment as still exist. The recent accident involving three Conrail freight locomotives and an Amtrak train does highlight some additional safety measures that I believe can and should be implemented. In order to lay a foundation for analysis of these proposed improvements in rail safety, especially on the Northeast Corridor, I think we should examine in some detail what went wrong on January 4th.

I. Contrail-Amtrak accident

On Sunday, January 4, 1987, three Conrail diesel freight engines coupled together without any cars behind them were being moved from Conrail's Bayview Yard to Harrisburg. This included a movement over Amtrak's NEC main line from the terminal just north of Baltimore to Perry Interlocking, across the Susquehanna River from Havre de Grace, Maryland for a distance of 29.8 miles. When runing over Amtrak tracks, Conrail crews are required to comply with Amtrak's operating rules.

The Conrail crew consisted of an engineer and brakeman, both of whom were in the cab of the leading locomotive. Under both Amtrak's and Contrail's rules, the movement was under the control and responsibility of the engineer.

Conrail locomotives operating over Amtrak's lines are required to be and are equipped with "cap signals"—that is, signals displayed in front of the engineer inside the locomotive cab that are comparable to the wayside signals. These locomotives are also equipped with a warning whistle, called an "audible indicator," that sounds whenever the applicable wayside or cab signal changes to a more restrictive indication of any sort. Amtrak Rule 550 requires that both of thee devices must be tested before the engine leaves its terminal. If either device is not working properly, the engineer must not enter "cab signal territory." All of the NEC main line between Washington and Boston is cab signal territory, with the exception of a short section East of Providance where it is currently being installed.

The Contrail engineer and brakeman claimed that, in the absence of mechanical people, they had performed the required tests themselves. In fact, however, neither device on the leading locomotive was working. The light bulb was missing in a most critical aspect of the cab signal indicator, and someone had taped over the warning whistle so that it could not be heard when the engine was running. Leaving the terminal at all without a proper test of these devices or with knowledge that the devices were not working, was a violation of both Amtrak and Conrail operating rules. This was the first of several independent and serious rule violations leading to the accident.

The engines were proceeding north on track No. 1 of Amtrak's four-track main line. At Gunpow Interlocking, these tracks are reduced to two in order to cross an estuary of the Chesapeake Bay, and at this point track No. 1 terminates through a switch into track No. 2. (See track diagram, Attachment 1). At the time of the accident and for several hours prior to that, this switch was set to handle high-speed through traffic on track No. 2, and, accordingly, it was set against entry on this track from track No. 1. A wayside "home" signal 349 feet south of this switch controls northbound traffic on track No. 1, and this home signal was set at "Stop." Another wayside "distant" signal 1.95 miles further south on track No. 1 registered "Approach," an aspect that instructs trains to: "Proceed prepared to stop at next signal. Train exceeding medium speed (30MPH) must at once reduce to that speed." (Signal Rule 285, Amtrak Operating Rules). After the accident, all of these signals were checked and tested by Amtrak and FRA as part of the National Transportation Safety Board (NTSB) inspection, and all were found to be working properly. The subsequent statement of the Conrail engineer to the effect that both the distant signal and the cab signals indicated an "Approach Limited" aspect are not credible under the circumstances. If an "Approach Limited" aspect had been displayed, it would have indicated that the route was clear to turn into the adjacent track No. 2 after the next signal at a speed of no more than 40MPH.

When the Conrail engines passed this "distant" signal, they were running at or slightly above the maximum speed permitted for this class of locomotives coupled together, 60MPH. In spite of their later statements, the engineer and brakeman either did not observe this signal, which certainly indicated "Approach," or they disregarded it and continued at the same speed in violation of Signal Rule 285. Tests subsequent to the accident under similar weather conditions indicated that the

signal was visible to the engineer some 1,278 feet and to the brakeman's nonoperating side of the cab some 2,118 feet before it was reached. The brakeman stated that he did not observe this wayside signal at all, even though he claims to have seen and reported a comparable aspect on the cab signal. In any event, when passing this signal, they violated another rule, Rule 34, which requires them to communicate to each other the indication or aspect of each applicable signal they pass. These were the second and third rule violations leading up to the accident.

On passing this signal, the warning whistle in the cab should have sounded, and the cab signal should have changed from the previous "Clear" aspect to "Approach." Since both the warning whistle and the "Approach" aspect of the cab signals had been neutralized, one by the taping up of the whistle and the other by the missing light bulb, neither was activated. What obviously did happen, however, was that the cab signals "went dark": the light behind the previous "Clear" aspect went out, and no other aspect appeared because the light bulb was missing from the "Approach" aspect which otherwise would have been lighted.

Under Amtrak Rule 551(g)(4), this constituted a failure of the cab signal apparatus, and under Rule 554, this occurrence alone would have required the engineer to reduce speed to no more than 40MPH and to notify the dispatcher or operator by radio. The fourth successive rule violation occurred when neither of these actions was taken, and the engines continued at or above 60MPH.

At a point 4,000 feet before the above mentioned "Stop" signal was reached, the locomotive passed a further safety device in the track that actuated the most restrictive of the cab signals, an aspect called "Restricting." Later tests proved that this aspect of the locomotive's cab signals was working properly. This also would have actuated the warning whistle if it had not been neutralized by tape. Under Rule 551(c), when a "Restricting" signal appears on the cab signals, "the Engineer must take action at once to reduce train to Restricted Speed," which for this location is defined as "not to exceed 20MPH." Again, the engineer subsequently stated that, prior to reaching the next or "home" wayside signal, his cab signals were all dark. In fact, as noted above, they were undoubtedly dark from the time he passed the distant signal until the "Restricting" cab signal appeared. In any event, the fifth successive rule violation occurred when both members of the crew also failed to respond to this critical "Restricting" signal.

Finally, tests which were made with similar engines after the accident indicated that, under weather conditions like those on January 4th, the wayside "Stop" signal could be seen and recognized at a distance of 5,178 feet, more than twice the distance required to stop with normal brake application and without applying the brakes in emergency, even at the 60+ MPH speed the engines were running. This was the crew's last clear chance. They failed to act, in violation of "Stop" Signal Rule 292, until they were so close to the "Stop" signal and switch that, in spite of a last-minute emergency brake application, the engine slid past the signal and through the switch directly into the path or our "Colonial," northbound Train #94. This sixth rule violation finally made the disastrous collision unavoidable.

This combination of six successive violations of operating rules, compliance with any one of which would have prevented the accident, can possibly be explained by drug test results showing marijuana constituents in the systems of both men in the Conrail engine crew.

Turning the focus now to Amtrak, I am distressed to say that Amtrak violated an FRA rule before the accident and is charged with violating another FRA rule after the accident. Neither of these, however, could have contributed to causing this disastrous collision to take place.

Amtrak operates two classes of passenger cars east of Chicago: the standard "Amfleet," and what we call "Heritage" cars. The Amfleet cars were specially designed for high-speed NEC service. The Heritage cars, although modernized and largely rebuilt, were inherited from the passenger railroads when Amtrak was formed in 1971.

FRA allows a maximum speed of 125MPH for trains with Amfleet cars, but only 110MPH for those with Heritage cars; Amtrak itself limits trains containing these latter cars to 105MPH. The train involved, the "Colonial" (#94), normally carries only Amfleet equipment, and so is usually authorized a maximum speed of 125MPH by both FRA and Amtrak. On January 4th, however, a single Heritage coach near the end of the train was added at Washington. Adding the extra car was an effort to avoid requiring passengers to stand due to the large number of holiday travellers. Our conductor states that, as required, he notified our engineer of the addition of the Heritage car; unfortunately, since the engineer was tragically killed in the accident, it has been impossible to verify this. Our examination of the speed tapes indicates that when the train approached the accident scene it was running at just

under 125MPH—the authorized speed for Amfleet cars on this segment of track, but in excess of both the FRA and Amtrak limits for trains with Heritage cars.

These speed restrictions with respect to Heritage cars were wisely imposed out of an abundance of caution with respect to cars not originally designed for operation at higher speeds. While the presence of one Heritage car near the back of the train made operation at its usual speed a technical violation of both Amtrak and FRA regulations, the car in fact operated perfectly and in no way contributed to the collision with the errant Conrail locomotives. While in my view it was a mistake in judgment to put the Heritage car on this train in the first place, and obviously a further mistake by the engineer not to have limited the train's speed in accordance with regulations once the car was added, these actions are irrelevant in any determination of the causes of the accident.

Amtrak has also been charged with failing to comply with other FRA regulations requiring drug and alcohol tests of train personnel after this kind of accident. In fact, our senior officers at the scene did make certain that such tests were performed on the Conrail engineer and brakeman, on the deceased Amtrak engineer, and on the Amtrak tower operator who controlled the signals and switches involved. All of these Amtrak employees tested negative for both alcohol and drugs. The Amtrak officers, however, did not order such testing of our train's conductor (who had been removed from the scene on a stretcher) and two assistant conductors. These were two clear reasons for not ordering those tests: first, it was plain that these men could not have contributed in any way to the accident because they were busy inside the train collecting tickets; secondly, since the men were injured and in shock, it was only compassionate for them to be treated and released as quickly as possible. Our people on the scene believed that this was appropriate. In fact, they had been furnished a card prepared by the Amtrak and FRA staff jointly which inadequately summarized complex regulations governing post-accident testing. It is now evident that the card was misleading. In any even, steps have now been taken to clarify these instructions and to make sure that no such mistake is made in the future.

While the National Transportation Safety Board usually does not make definitive findings on the cause of rail disasters until many months after the start of its investigation, we are satisfied that in this case there is overwhelming evidence that the sole cause of the accident at Gunpow Interlocking was the combination of the condition of the Conrail locomotives and the outrageous conduct of the Conrail crew who violated not one but a whole series of important operating rules, each of which was designed to prevent just this sort of thing from happening.

I would like to turn to the more important questions of what we can or should do to prevent this sort of accident in the future. As already noted, the system now in effect would have effectively prevented the accident in spite of any two or three serious human errors, but it was overwhelmed by an almost incredible series of successive rule violations involving Conrail equipment as well as both members of the Conrail engine crew.

II. Automatic train control

Installing automatic speed control (also known as "automatic train control" and referred to hereafter as "ATC") on all freight and commuter equipment operating on the Northeast Corridor would be the most effective step we could take to avoid a repetition of this type of accident. All Amtrak passenger locomotives and self-propelled car operating on the NEC are currently equipped with ATC, which, when activated, will bring the train to a stop. Had this system been in effect on the Conrail locomotive, the January 4th accident would have been prevented in spite of the chain of human error and series of rule violations committed by the Conrail engine crew.

There are currently in use on various railroads a number of train control devices, with no universally accepted terminology. The least effective is the warning whistle device that was installed in these Conrail freight locomotives; when the applicable signal changes to a more restrictive aspect, the whistle sounds and continues to sound until the engineer acknowledges it by some action such as pressing a button. Thereafter, it is up to the engineer to adjust the speed manually, to stop, or to continue as before

The automatic stop system is similar, except that if the engineer does not acknowledge the warning device within a short time, the locomotive is automatically brought to a stop. This is an important additional safety feature. Again, however, if the engineer does acknowledge the warning, the train continues at the same speed until he manually slows or stops it.

Finally, the ATC system will automatically apply the brakes and bring the train to a stop unless the engineer affirmatively takes action within a short time (on Amtrak, about 6 to 8 seconds) to bring the train's speed down to or below the limit called for by the signal indication. It is with this device that all Amtrak passenger engines operating on the NEC are equipped.

As already noted, had this device been in place on the Conrail engines, it would effectively have prevented this accident in spite of the engine crew's errors. The first and most obvious preventive action I would recommend, therefore, would be requiring all freight and commuter equipment operating on the Northeast Corridor to be equipped with ATC. I am pleased that the NTSB is also recommending this.

Amtrak management has already taken the first step toward ensuring that all trains operating on the NEC are so equipped by ordering acquisition and installation of these devices on all of Amtrak's work train locomotives—the only Amtrak road engines assigned to the NEC that are not now so equipped. Pending the completed installation of these devices, Amtrak work equipment will be limited to 30MPH. We are also issuing instructions that our terminal switch engines without such equipment are not to be operated outside their terminals except on those very rare occasions when they be required to rescue a disabled train. Even then, they may not be so used unless in the charge of a qualified supervisor and with notices to the dispatcher.

When we look at the other trains being operated on the NEC, however, the situation becomes quite complex. Between New York and Washington, our lines are used by Conrail and Delaware & Hudson Railroad for freight, and by New Jersey Transit, SEPTA and MARC (Maryland DOT) commuter trains. All MARC locomotives on NEC are equipped with ATC; some NJT equipment has ATC and the rest has only automatic stop; SEPTA equipment has only automatic stop. Conrail and D&H freight locomotives here similarly to not have ATC or stop equipment, but only the type of whistle warning described above.

East of New York, Conrail operates a relatively small amount of freight on portions of our line between Penn Station and approximately the New York-Connecticut State line. From that point to New Haven, Connecticut, the railroad is under long-term lease from Penn Central to the Connecticut Department of Transportation and operated by the Metro-North Commuter Railroad Company, the operating arm of New York's Metropolitan Transit Authority (MTA). I understand that Metro-North commuter trains and, of course, Amtrak passenger trains have Automatic Speed Control, but that the relatively few Conrail freight locomotives that operate in this line are equipped with automatic stop but not with ATC.

Moving further east, Amtrak owns the main line from New Haven to the Rhode Island-Massachusetts State line, over which only Amtrak, a modest amount of Conrail freight (west of Old Saybrook, CT), and the Providence & Worcester Railroad (east of Old Saybrook, CT) now operate. Conrail and P&W engines there have neither automatic stop nor ATC.

From the Rhode Island-Massachusetts State line to Boston, the line is owned by Massachusetts Bay Transportation Authority (MBTA). These tracks are used by Amtrak's trains, by MBTA commuter trains now operated by Amtrak under contract, and by Conrail freight trains. Amtrak and MBTA trains are equipped with ATC equipment. Conrail's freight engines have neither automatic stop nor ATC.

Amtrak claims the right to impose requirements such as the use of Automatic Speed Control devices on freight and commuter trains operating over our own lines, but this has been and could be contested by at least some of those operators. We have, of course, no such rights with respect to those portions of the NEC not owned or operated by Amtrak. As a result, a statutory or federal regulatory requirement is probably the only practical way to accomplish this objective within a reasonable time.

III. Limitations on NEC freight traffic

Installation of ATC on all locomotives and self-propelled cars operating in the Northeast Corridor, while essential, does not in our opinion go far enough. If we are effectively to prevent passenger train accidents caused by freight traffic on our NEC lines, we must eliminate the intermixture at the same time and on the same right-of-way of heavy freight trains and high-speed passenger and commuter operations. There is no sure way otherwise to avoid such accidents as the falling off of piggy-back containers from freight cars into the path of fast passenger or commuter trains, or the pile-up of freight trains over adjacent passenger tracks from causes such as broken freight car wheels.

Parallel rail routes between New York and Washington exist today that, with some improvements, could handle substantially all through-freight movements. (See

Attachment 2 for map of these lines.) North of Philadelphia, Conrail owns tracks of the former Reading and Central of New Jersey Railroads, among others, that could handle through freight now using our NEC line there. From Philadelphia to Baltimore and Washington, arrangements could be made for such freights to use closely parallel CSX (former B&O) tracks.

Because local freight service must be continued to serve industries reached only by NEC tracks, it would not be feasible to eliminate all freight from the Corridor. Following discussions with Conrail and other freight carriers, however, Amtrak has by bulletin, effective at 12:01 a.m. on Monday February 16, limited the speed of all freight trains (including light engines in freight service) to 30MPH on the Amtrak owned or operated portion of the NEC main line between Boston and Washington between the hours of 6:00 a.m. and 10:00 p.m. During the night hours from 10:00 p.m. to 6:00 a.m., when there are relatively few intercity passenger or commuter trains operating, we are developing procedures that will minimize or eliminate the instances when freight and passenger trains pass on adjacent tracks at speed, making a substantial contribution to improved safety. We also are encouraging the freight railroads to find alternate routes for through-freight service. While this will decrease Amtrak's revenue from this source, this loss will be more than compensated by reduced maintenance-of-way costs and improved ride quality of our passenger and commuter trains.

IV. Federal licensing standards

I support the proposal to establish uniform minimum standards that must be maintained for locomotive engineers. We at Amtrak and most other railroads currently have strict requirements for qualification and requalification of locomotive engineers. These include physical examinations, completion of training, actual experience with and knowledge of the portion of the railroad on which they are permitted to operate, knowledge of railroad operating rules, etc. Reexamination on knowledge of rules is required every year, and there are requirements with respect to periodical physical examinations. We do not, however, have available to us information with respect to the employee's private life or activities outside of his job, and it is questionable whether, under existing regulations and labor contracts, we could use such information to disqualify an engineer even if it were available. Accordingly, I support federal regulations that (1) would prescribe minimum qualification standards for locomotive engineers which would be uniform throughout the country, that (2) would require the railroads to issue licenses or some other form of formal certification of qualification, that (3) would require annual reexamination and renewal, and that (4) give the Secretary of Transportation access to the National Driver Register and authority to pass on relevant data to the appropriate railroad for licensing purposes. In my opinion, the railroads themselves should administer this licensing with oversight by the Federal Railroad Administration (FRA) of the Department of Transportation, rather than having the licenses issued to individuals by a federal bureaucracy itself.

I emphasize that the uniform federal qualification requirements should be described as the "minimum" requirements for qualification of engineers. Individual railroads would then add additional qualifications that might be required because of their unique operating conditions, and, of course, the employing railroad would be the best one to detemine that a particular engineer is suitably acquainted with the section of railroad over which he is to run. It should be understood that a fully qualified engineer over one route is not qualified or permitted to operate a train over another route over which he has not been qualified through knowledge and experience, except with a qualified supervisor or "pilot."

National data bank information on relevant off-the-job activities by locomotive engineers or locomotive engineer applicants should be made available to and usable by the qualifying licensing authority. Federal regulations should make it clear that these data are to be taken into consideration in initially qualifying as well as annually renewing locomotive engineer qualifications. Additionally, each applicant for the locomotive engineer license or certificate of qualification and each holder thereof should be required to report promptly to the company, and through the company to a national data bank, such events as speeding violations, reckless driving, and driving under the influence of drugs or alcohol. The availability of these facts to the FRA and to the railroads having the responsibility for qualifying engineers will be of critical importance.

V. Drug and alcohol testing

Amtrak and many other railroads have in place an Employee Assistance Program (EAP) that provides confidential professional counseling and treatment for drug

and/or alcohol abuse. Amtrak's EAP has been in existence since 1975. Effective March 1, 1986, Amtrak revised its EAP policy to include a "Rule G waiver" provision. Under that provision, an employee found to be in violation of Rule G of Amtrak's Operating Rules prohibiting the use of drugs or alcohol may, if a first offender, waive investigation of the Rule G charge and disciplinary action by choosing to enroll in the EAP.

This is comparable to the program generally described as "Operation Red Block" in which the operating unions participate. Amtrak would like to have union support of and participation in a Red Block program, and we recently opened negotiations on this question with the United Transportation Union (UTU, representing Conductors and Assistant Conductors) and the Brotherhood of Locomotive Engineers (BLE, representing Locomotive Engineers). On February 11, agreement in principle was reached on this issue with UTU, and negotiations to accomplish the same result are ongoing with BLE.

Although Operation Red Block and EAP are important, these programs alone are insufficient to address the very serious risks that drug and alcohol use by railroad employees impose. There must be a more stringent method for stopping substance abuse by those whose activities involve the safety of the public.

To address this problem, the Federal Railroad Administration (FRA) on July 31, 1985, issued regulations requiring post-accident testing of certain employees involved in major accidents and authorizing toxicological testing of any employees when there is reasonable cause to suspect drug or alcohol use. Important rule violations, among other things, provide such reasonable cause.

Again these regulations are helpful but not sufficiently effective to solve this very serious problem. In the case of the January 4th accident, an experienced Conrail supervisor who was specially trained to recognize users of drugs and alcohol had talked with both members of the Conrail crew before they departed for the terminal and did not detect any indication of drug use. Other similarly trained Conrail supervisors observed them shortly after the collision with the same result; however, in post-accident testing, both crew members had positive test results for marijuana. "Reasonable cause" testing must be continued but is inadequate by itself to detect use of drugs that have subtle behavioral effects. If we are to provide the safety to which the public is entitled, a fair system of mandatory random urine and blood testing for alcohol and drug use among all safety-related employees is essential.

Accordingly, I urge the Congress to pass legislation requiring the DOT to promulgate regulations calling for random drug and alcohol testing of "hours of service" and other rail employees whose duties directly affect public safety. These regulations should apply also to other comparable transportation workers such as airline pilots and air traffic controllers.

In my opinion, such requirements should have three important features:

First, the testing should be selected by a computer so as to be truly random and not subject to attack on the basis of claims of individual discrimination or harassment. Second, the preliminary screening test, if positive, should be subject to a verification test by a more accurate (and costly) method. Third, the sole issue to be determined through such testing would be whether a detectable amount of prohibited drug is present; "impairment should not be at issue since it is impossible to quantify scientifically. The use at all of prohibited substances should preclude an employee from, for example, driving a locomotive or flying a commercial airliner.

VI. Passenger car safety improvements

Amtrak has an ongoing program to modify existing equipment to improve the interior of our passenger cars. Some of this has already been accomplished, but we are currently developing further improvements in seat covers, seat restraints, baggage restraints, and microwave oven restraints.

NTSB investigations after a July 1984, Amtrak accident in Vermont revealed that some passengers suffered head and facial injuries when the seat back in front of them dislodged, exposing a piece of sheet metal that serves as part of the headrest support. As a result of this, Amtrak immediately began redesign of coach and seat back cushions used on Amfleet and Heritage coaches to prevent their becoming dislodged when struck from behind.

Amtrak has designed a device which fits over the tip of the seat back and forms a safe plastic edge to cover the sheet metal which may become exposed on impact. In addition, a new seat cushion has been designed that should reduce the incidence of cushions pulling from their seats, exposing the sheet metal supports. Amtrak solicited bids from interested suppliers on this retrofit in mid-November and awarded a contract in December. We have already reviewed the design developed by the manufacturer, and we have asked for certain modifications which we are hopeful will

produce a final design of this piece of equipment by this spring. The estimated unit cost per car of these devices is $525,00. 348 NEC units would be needed, with a total cost of $158,500. 319 additional units would be needed to improve the entire Amtrak fleet, at an additional cost of $164,5.00.

Another seat improvement Amtrak will be installing is a redesigned seat lock device which would prevent rotation of seats on impact. The unit cost per car is $5,544.00. The NEC requires 348 units at a total cost of $1,929,312. The additional total fleet requires 506 units at a total cost of $2,810,808.

In December, 1986, a prototype design for overhead luggage retention devices was developed and installed on an Amfleet coach. The prototype is now being tested. When Amtrak is satisfied with the design, all Amfleet cars will undergo a retrofit. In addition, Amtrack has designed improved baggage restraint features into its new generation of low level sleeping cars. The unit cost per car for this improvement is $8,332. 348 NEC units would cost $2,899,536. The 731 additional system units would cost $6,090,692.

Finally, more effective restraints on the microwave ovens in food service cars have been designed and installed on a number of cars. The estimated cost for completing these modifications is $350 per unit, for a total of 69 NEC units ($36,570) and 130 additional total fleet units ($68,900).

VII. NECIP

As you know, Mr. Chairman, $2.5 billion has been authorized for the Northeast Corridor Improvement Project (NECIP), of which approximately $2.2 billion has been appropriated. Although this Administration has not requested any further funding for this program, FRA and Amtrak had agreed on what projects should be funded if funds up to the $2.5 billion were available. Congress included a list of those projects in Title VII of the Railroad Reauthorization and Regulatory Reform Act (4R Act). In the aftermath of the Chase, Maryland accident, a number of issues have surfaced that need prompt attention. Some of those issues include projects that should be added to the list of projects spelled out in law under NECIP. These projects are listed in Attachment 3 to this testimony and are related to safe operation of the Northeast Corridor. Included among them are the passenger car modifications mentioned above.

We are not suggesting that the Committee increase the authorization of $2.5 billion but are simply asking the Committee to allow this list of safety related projects to compete for possible future funding with those projects already on the list. Amtrak intends to ask the Appropriation Committees to consider providing funds in FY 1988 for those projects which can be completed in that year and which can enhance safety in the NEC. Therefore, I am requesting that this Committee amend the 4R Act to include these projects as part of the already authorized NECIP project.

VIII. Antitampering Sanctions

Finally, I would urge the Committee to give the Federal Railroad Administration the authority it needs and has requested to regulate directly the conduct of railroad employees who have safety related responsibilities. At the present time, the Department of Transportation does not have the statutory authority necessary to penalize railroad employees who tamper with safety devices. I think this committee can help resolve the problem of tampering with safety devices by giving the Secretary the authority needed to impose sanctions on any individuals as well as companies who violate the law.

Mr. Chairman, that concludes my prepared testimony. I will be happy to answer any questions from you or members of the Committee.

ATTACHMENT 3.—ITEMS TO BE ADDED TO 4R ACT

Some important safety programs are already authorized in the 4R Act, and Amtrak proposes adding the following:

PROPOSED PROGRAMS

Communication and Signal.—Improvements to the Communication and Signal systems at locations between Wilmington, Delaware and Boston, Massachusetts on the Northeast Corridor main line and between Philadelphia, Pennsylvania and Harrisburg, Pennsylvania on the Harrisburg line.

Electric Traction.—Improvement to the Electric Traction Systems at Wilmington, Delaware and Newark, New Jersey.

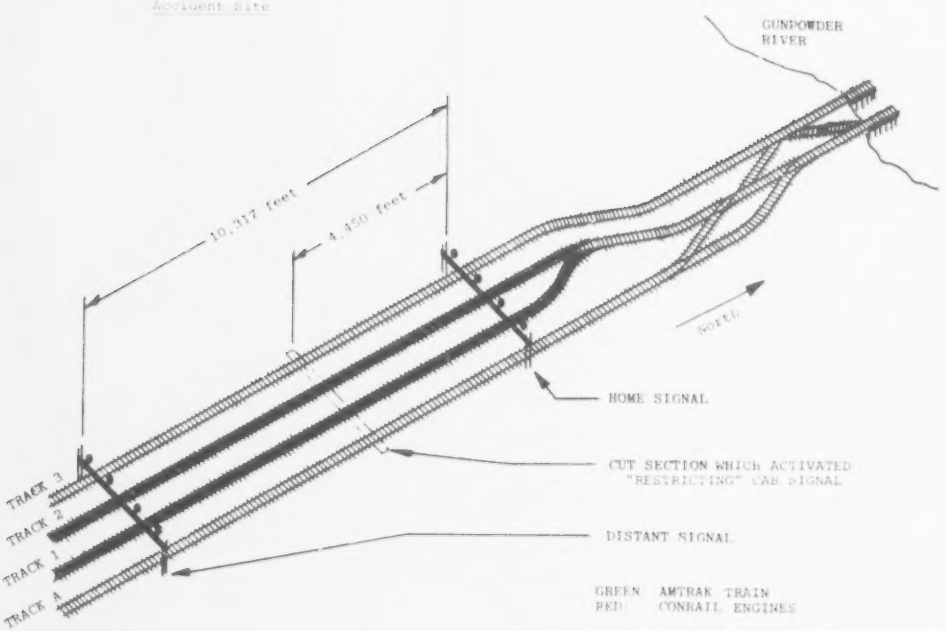
Passenger Car Modifications.—Installation of Baggage Rack Restraints, Seat Back Guards and Seat Lock devices on 348 passenger cars operating within the Northeast Corridor.

Locomotive Modifications.—Installation of 44 event recorders and 10 electronic warning devices on locomotives operating within the Northeast Corridor. Acquire cab signal test boxes and install 9 wayside loop code transmitters for use on the Northeast Corridor.

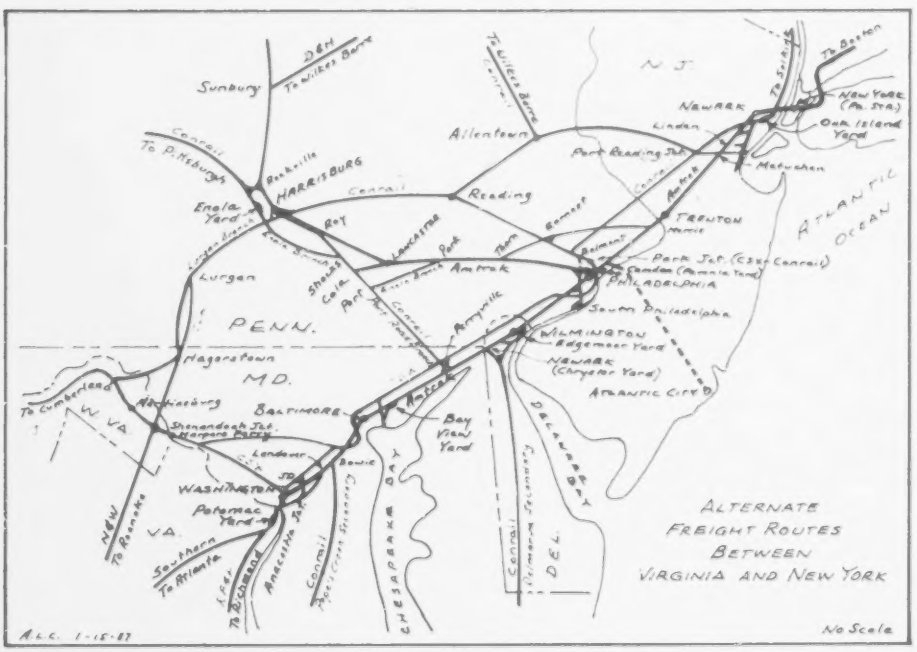
Attachment #1

GUNPOW INTERLOCKING

Accident Site



Attachment #2



Senator EXON. Thank you very much.
Mr. Hasselman.

STATEMENT OF RICHARD B. HASSELMAN, CONSOLIDATED RAIL CORPORATION, ACCOMPANIED BY DONALD A. BRINKWORTH

Mr. HASSELMAN. Thank you, Mr. Chairman. In my testimony, I mentioned that Conrail is the second best railroad in the railroad industry with respect to employee safety for the last 3 years, 1984, 1985 and 1986, so you can imagine that this incident at Chase, MD really shook us up.

I describe in that statement our 6-month training program for locomotive engineers, our annual testing program for all operating employees on operating rules, and our constant comprehensive observation program, in which our supervisory officers monitor the performance of all employees in all of the operating rules on a constant basis. I also describe the 2-day management awareness program we have under which all of our supervisors are instructed about the use of drugs and how to detect it and deal with it.

I point out, however, as you heard earlier, that one of our supervisory officers visited with, in close proximity, these two employees when they went on duty on the day of the incident. He was 2 feet away from them. He was helping them make copies on a copying machine. They went out on their engine. They came back again and got some paper towels to wipe their window with, as you might have heard earlier. The supervisor was observing them all this time and took no exception to their condition.

Also, right after the accident, which was not all that much later, four other supervisors, who had also been through this program in the summer of 1986, observed these two employees again, and again took no exception to their condition except that they were visibly shaken, presumably by the accident.

So my conclusion from all that is that if reasonable cause means that you have to observe something unusual about the employee's personal condition in order to give him a test, I do not think that is going to work. I think there has to be other circumstances come into play, whether it is random testing or whether it is what the Southern Pacific calls "for cause" testing, where they perform tests whenever they observe an employee doing something strange, not personally strange, but he is involved in an accident or an incident, or a rule violation. They put him through a testing program, and have brought down their instance of drug violations substantially as a result of that, we understand.

As far as the Northeast Corridor goes, in my testimony I explained the use that we make of the corridor. I explained our desire to get off the corridor as much as Mr. Claytor desires to have us get off. I talk about the success we have had in diverting traffic to our own parallel lines where we have them, but that we have not yet had much success in diverting traffic either to the parallel line of the Chessie or to the Norfolk Southern's Hagerstown Gateway; two things which we are still working on, and if we are successful we will get considerably more freight traffic off of the corridor.

In my testimony, as you mentioned earlier, I discussed the various safety devices with which these locomotives are equipped and stated my concern about the application of the speed control device (such as exists on passenger trains) to freight trains because it might create a whole new series of problems. We are, however, taking steps to modify the device that we have on our present freight locomotives by substituting an electronic alerting device in place of the air whistle, which device cannot be nullified as was this air whistle by being taped over.

As far as licensing of locomotive engineers is concerned, I think, as Mr. Dempsey and others explained, the railroad employees already have to have and maintain extensive qualifications which are probably far more extensive than those required for motor vehicle operators' licenses; however, if licensing is necessary we are willing to work together on some voluntary licensing program which presumably would be managed by the railroads.

I think the distinction between the railroads and the FAA is that FAA actually manages the air traffic control system, whereas the railroads manage their own traffic control systems under their own rules.

Finally, Conrail has been cooperating with Amtrak with respect to safety in the Northeast Corridor. We have been having weekly meetings with Amtrak to try to work out some acceptable solutions to the things that Mr. Claytor referred to. Let me make it clear that we intend to continue to do so.

[The statement follows:]

STATEMENT OF RICHARD B. HASSELMAN, SENIOR VICE PRESIDENT—OPERATIONS, CONSOLIDATED RAIL CORPORATION

I am Richard B. Hasselman, Senior Vice President—Operations, Consolidated Rail Corporation, Philadelphia. In this position, which I have held since 1976, I am responsible for all train operation, engineering and maintenance functions of the railroad, including safety and operating rules. Accompanying me today are Donald A. Brinkworth, General Counsel of Conrail and several members of my staff.

Conrail has been extremely concerned about the January 4 accident, not only because of the anguish it caused to so many people, but also because it questions our reputation as a railroad. Our employee safety record for 1984 and 1985 was second-best among all major U.S. railroads in employee safety, and we expect to be in that same position when 1986 results are announced by the Association of American Railroads.

Conrail has fully cooperated with the ongoing investigation of the January 4 accident by the National Transportation Safety Board, the Federal Railroad Administration, and Amtrak. We have also complied with the National Transportation Safety Board's request that no information be released to the news media and public except through the NTSB.

The Northeast Corridor is owned, operated and maintained by Amtrak. Conrail is one of Amtrak's several tenants in the Corridor, under terms of a contractual agreement. Conrail has the right to operate its freight trains over most of the Washington-Boston corridor and its branches to Springfield, MA and Harrisburg, PA. As a corollary, Amtrak employees operate Amtrak passenger trains over various lines owned by Conrail, under similar contractual agreements.

EMPLOYEE TRAINING AND MONITORING

Let me describe the manner in which Conrail trains its employees—particularly locomotive engineers—and monitors their subsequent performance to ensure compliance with operating rules and procedures.

Before an employee can become a locomotive engineer, he must attend a six-month engineer training program. That program involves about eight weeks of classroom work on operating rules, including signal indications, train handling, loco-

motive operation, air brakes, and other important items. The other eighteen weeks involve actual experience in locomotive operation, in the employee's assigned territory, working with highly experienced engineers selected for that purpose, and under the periodic supervision of the Division Road Foreman in charge of that territory. Following this six-month training, the individual is given an examination by the Division Road Foreman to determine whether he is fully qualified to become a locomotive engineer. This process involves written testing, in addition to actual performance observations.

Once qualified, all Conrail train and engine operating employees are examined annually on the operating rules, and biennially on air brake rules and practices. During recent years, these tests have been written.

Perhaps even more important than the written tests is Conrail's Operating Rule Observation System for monitoring employee performance and rules compliance. In 1986, under this system, 536 Conrail supervisory officers monitored the performance of 8,785 train and engine employees, including all 3,001 locomotive engineers. The monitoring process involved a total of 870,602 individual rules observations—the majority of which were made without the employee's knowledge. These included 255,978 observations of engineers on a variety of applicable rules, including 130,684 instances of signal compliance.

Conrail's Rule 285— the approach signal—applies to all employees in the locomotive cab. During 1986, 75,785 individual observations were made of this rule. Those tests developed compliance failures in only 42 cases—or less than 1/10 of 1%. Disciplinary action was taken in those and in all such cases. I believe this shows a good record of performance, and is one of the reasons behind our good safety record.

Conrail's operating rules observation and testing program is on file with FRA and I understand they consider it to be one of the best in the industry. I understand that Amtrak has a similar program, by which they monitor the performance of all employees who operate in the Northeast Corridor, including employees of Conrail. As you may know, it is the responsibility of the owner of any line of railroad to monitor the performance of all personnel who operate on that railroad, including employees of tenant railroads.

During the past 15 months, Conrail supervisors made observations on engineer Gates on 8 dates. These observations involved 42 signal rules, 12 speed and 23 other rules. While checks of employees within the Northeast Corridor are the responsibility of Amtrak, Conrail supervisory officers also make such checks whenever they ride on or otherwise observe Conrail trains in the Corridor. During the 15-month period described earlier, Conrail supervisors observed engineer Gates' performance at various points within the Northeast Corridor—including at Gunpow on June 23, 1986—and he was found to be in compliance in all of these observations. During the same 15-month period, brakeman Cromwell was observed on 3 dates, involving a total of 25 operating rules of which 14 were signal rules, 10 speed, and 1 other rule, all of which showed compliance. (The observer did record one instance in which there was a broken coupler knuckle, however this was not a rule violation, although it was initially miscoded as a speed violation.) One of the checks, on September 6, 1986, involved speed at "Gunpow", and found him to be in compliance.

ALCOHOL AND DRUG AWARENESS

As to alcohol and drug awareness, since June 1983 Conrail has been conducting a "Management Awareness Program" with its supervisory officers. This is a two-day program designed to provide current facts on alcohol and drugs, to demonstrate behavior which may indicate use of alcohol and/or drugs, and to instruct supervisors how to respond when such behaviors are encountered. As of December 31, 1986 a total of 1,770 personnel have been trained in this program. Subsequent to the promulgation of FRA's new Federal Rules on alcohol and drug use, Conrail has developed a four-hour "Refresher Course" for personnel who have already attended the two-day program. This refresher covers the additional FRA material and both programs have been approved by FRA.

On January 4, 1987 when Messrs. Gates and Cromwell were reporting for work at Conrail's Bay View Yard in Baltimore, they were observed by Trainmaster George Mince. Trainmaster Mince, who participated in Conrail's two-day awareness program in August, 1986, conversed with Messrs. Gates and Cromwell while they were making copies of a Bulletin Order. Mr. Mince was within two feet of Messrs. Gates and Cromwell and took no exception to their condition.

Subsequent to the accident, Trainmaster Mince and four other Conrail supervisors, all of whom had attended Conrail's two-day drug and alcohol awareness program during 1986, had occasion to scrutinize Messrs. Gates and Cromwell, and again

took no exception to their condition, except to observe that they were shaken by their experience. All of this suggests that personal observation, even when made by supervisors who have received training in this matter, is simply not adequate to detect drug use. This means to me that some additional procedures are probably necessary, if any employer is to identify employees who use these illegal substances.

CONRAIL'S USE OF THE NORTHEAST CORRIDOR

One of the issues raised subsequent to the accident involves the use of the Corridor for both freight and passenger trains. As you know, that issue is not new. Conrail's predecessors owned the Northeast Corridor and operated both passenger and freight service on it for more than one-hundred years, with relative safety.

Conrail uses the Corridor for two reasons—first, to reach points which are served only from the Corridor and second, as a route to connect major cities—particularly those between Washington and Newark, New Jersey. I am restricting my remarks to the portion of the Corridor.

I have prepared a chart which shows the Corridor between Washington and New York. The numbers opposite the names of principal locations represent the approximate 1986 carloads of traffic destined to or from customers at those points. The total of all these numbers represents 638,000 annual carloads.

A few of the numbers are shown with a black background. Conrail can handle part of those 248,000 carloads via alternate routes, in fact, we already use alternate routes for some.

The balance of the traffic local to the Corridor totals 390,000 annual carloads. It is impossible for Conrail to reach most of these ponts via any alternate route. The traffic involved is of a wide variety, including food products, groceries, coal, grain, automobiles and parts, steel, chemicals, piggyback traffic, mail, etc. It is, therefore, essential that Conrail continue to operate in the Corridor, in order to provide rail-freight service to this sector of the Northeastern United States.

I have prepared a second chart which illustrates Conrail's through freight train operation in each major segment of the Washington-Newark corridor. The numbers with black background are the number of average daily through freight trains operated in 1977, while the lower numbers are those operated in January 1987. The chart also shows alternate routes of Conrail, as well as the Washington-Philadelphia route of CSX.

You will note that we are operating substantially fewer trains in the Corridor in 1987, than we were in 1977. For example, between Trenton and Newark, NJ, the number of scheduled freight trains has been reduced from 30 a day to 6 a day. Most of these reductions represent diversions to Conrail's alternate routes, which have been extensively rehabilitated since 1977. The remaining 6 trains—three in each direction—are necessary to handle our mail and parcel traffic to/from our Newark and Philadelphia piggyback terminals, to service automotive assembly plants at Metuchen and Linden, and to reach other customers not served by other routes.

Conrail has several incentives for diverting traffic from the Corridor. From a service viewpoint, the alternate routes circumvent the delays, which are regularly encountered in the Corridor. And, from an economic point of view, the alternate routes avoid our paying Amtrak the extremely high trackage charges of 52-½ cents per car mile.

Between Philadelphia and Washington, we are confronted with a more difficult situation than that north of Philadelphia. In 1986 we rerouted two daily trains to the CSX route between Philadelphia and Potomac Yard. On January 22, 1987, we asked CSX to let us operate four additional trains daily on that route, and we are awaiting their response. However, when that has been done, we will still have six daily trains in the portion of the Corridor between Perryville and Baltimore. Those trains use Conrail's Port Road Branch between Harrisburg and Perryville, enroute to Baltimore and Washington. It is not feasible to operate them via the CSX route between Perryville and Baltimore because no suitable connection exists at Perryville.

In summary, then, Conrail has already diverted substantial freight traffic from the Northeast Corridor and continues to seek means of diverting further traffic, however it is apparent that it is impossible to divert all such traffic.

Conrail has attempted to schedule its freight trains during night hours to the extent possible. I have prepared a chart which shows the number of scheduled Conrail trains and Amtrack trains during each hour of the day, from midnight to midnight, passing Gunpow. You will note that no freight trains are scheduled at this point between the peak passenger hours of 6 a.m., and 7 p.m., and most freights

operate at night. In addition, Conrail operates two to four unscheduled trains here daily, usually at night.

SAFETY DEVICES

The movement of Conrail locomotives, on January 4, was governed by a number of safety devices. The most important of these was the wayside signal system which was approved by FRA before installation.

The second safety device is the cab signal system on the locomotives. That system is specifically intended for high-speed operations, such as the 125 MPH passenger trains on the Corridor. While not as important for 50 MPH freight operations, it is, nevertheless, available to those trains.

The third safety feature is the cab signal whistle, which is designed to sound whenever the cab signals change to a more restrictive indication, and continues to sound until the engineer operates an "acknowledging" device.

The fourth safety device is the "Dead Man Control" which requires that a foot valve be continuously depressed while operating the locomotive.

According to engineer Gates, all of the safety devices on the locomotive were found to be operative before his departure from Baltimore. While engineer Gates' testimony indicates that the cab signal whistle sounded at the time he performed his tests at Baltimore, the whistle was found to be plugged by tape when the locomotive was inspected some 25 hours after the incident. If this condition had existed at the time of the departure test, engineer Gates would have been aware of the fact that the whistle was inoperative and presumably taken steps to have it corrected as the rules require. Post accident inspection also found that the bulb had been removed from the "Approach" indicator of the cab signal device. However this simply means that the cab signal would be interpreted as "Restricting", rather than "Approach". Since "Restricting" is a more restrictive indication than "Approach", this would not detract from operational safety. Even so, Conrail rules require that all features of the cab signal system work properly, at time of the pre-departure test. If the bulb had been missing at that time, it could have easily been replaced.

NTSB RECOMMENDATION

On January 15, 1987, NTSB recommended that Amtrak "immediately initiate a program which will assure that all locomotives operating on the high-speed passenger train trackage of the Northeast Corridor are equipped with a device which will control the train automatically as required by the signal if the engineer fails to do so." There are serious questions as to whether this is a practical recommendation for freight trains. Either the speed control system, or the automatic train stop system which is presently being suggested by NTSB, is unsatisfactory for freight train application because both require extraordinary braking procedures which can easily result in freight train derailments. A study on such braking procedures, prepared by a special task force for the Railroad Safety Board of the Federal Railroad Administration on July 3, 1980, concluded that "freight train braking using full service application . . . produced drawbar forces exceeding the safety limit of drawbars on some trains simulated. On other trains, the drawbar forces generated were close to the critical value of 250,000 pounds." Such conditions can result in trains breaking in two or buckling and derailing onto adjacent tracks. As a result, either of these proposed "safety devices" could create far more serious problems than those which it is contemplated to solve. However, Conrail will work with Amtrak, FRA and NTSB to see whether these problems can be resolved, or if a more suitable alternative can be devised.

The proper braking of freight trains requires the skilled hand of a qualified locomotive engineer. As yet, no device has been developed which can safely automate this function.

ALTERNATE RECOMMENDATION

What is needed, as I see it, is a system which will insure that none of the present safety devices are nullified or made inoperative. We have heard of occasional instances in which cab signal whistles were found to have been plugged, so they could not sound. This presumably is done because the whistle presently used emits an extremely shrill tone. I think it will prove far more effective to correct this condition, by providing an electonic warning signal (which will be less irritating but equally audible) and to install this warning signal so that it cannot be nullified or disabled. I am having a study made of this alternative and urge NTSB, FRA and Amtrak to give it primary and serious consideration.

Such a system will, in my opinion, provide increased safety for the operation of freight trains in the Northeast Corridor. These freight trains do not have the same extremely high-speed environment which exists in passenger service.

Let me reiterate our concern and regret regarding the January 4 accident and let me pledge Conrail's commitment to any reasonable approach which will contribute to increased rail safety. We have been holding weekly meetings with Amtrak to discuss present and future operations within the Corridor, and, as explained earlier, we are waiting for CSX's agreement to divert four Philadelphia-Washington trains from the Corridor to the parallel B&O route.

Senator EXON. Mr. Hasselman, thank you very much.

Mr. HASSELMAN. This is our general counsel, Donald A. Brinkworth. I did want to introduce him.

Senator EXON. I have just a couple of questions. First, you will be back, I believe, some or all of you, to the meeting on Friday?

Mr. CLAYTOR. Yes.

Senator EXON. I hope that out of that meeting Friday can come some kind of a consensus. We are never going to agree on everything, obviously, but I think if I can sense the feeling of the Congress, which I think I do, that is that this drug and liquor problem is something that we want to get on with very, very quickly, and I think we have to move on that, and I think we will be moving. It seems to me that testing is such an appropriate thing that everybody pretty much should be on board for it.

I hope I will not slow down the process. It seems to me, though, that if we are going to come up with something like this, it would be a good idea to have an all-encompassing bill that does not just talk about railroads but talks also about other means of public conveyance. It seems to me that if it is good for someone who is the engineer of a locomotive, then the same thing should be good for the pilots in the left and right seats of those aircraft. Likewise, although we have had nothing recently, I believe the last major bus tragedy that we had directly involved the use of either alcohol or drugs or maybe both.

Let me ask this question, Mr. Dempsey, of the railroad that you represent. Is there any hard evidence that the drug and alcohol problem is becoming more severe, is it the same as it was, or is it becoming less severe?

Mr. DEMPSEY. There has been a study made, but it is dated and it does not really go to your question. That study indicates that there is a significant problem as to both drug and alcohol. I have anecdotal evidence from some railroads, and then I would ask Mr. Claytor and Mr. Hasselman to speak to their own railroads, which indicates that the alcohol abuse is probably about the same but the drug abuse has become a much more serious problem. I am talking here about not just marijuana but cocaine as well.

Senator EXON. Mr. Claytor?

Mr. CLAYTOR. We have, of course, an employees assistance program which calls for treatment of both drug and alcohol problems, whether they are caught or whether they are turned in by someone else or if they turned themselves in. We give them an opportunity to get treatment, and we have a very substantial number in treatment for drugs particularly.

I think the drug problem in the country, and the railroad industry is not unique in this, is increasing all the time, and I think, therefore, we need to do something about it rather quickly.

Senator EXON. Mr. Hasselman?

Mr. HASSELMAN. It had been my thought that the alcohol problem in the industry is probably less of a problem than it might have been at sometime in the past. I must say it had been my thought that the drug problem was not something which we were experiencing here in the east, but I think I might have been proven wrong by this recent instance.

We have stepped up our own program for performing drug tests in conjunction with periodic physical examinations. This involves an expense of about $1 million a year to do this, but we think it is a worthwhile investment in safety. I do not know, however, whether that is going to bring out the occasional user because the person will know when his physical examination is scheduled, and perhaps he will stay away from the stuff for a period of time.

So we are groping, we are looking for something better. Whether it is random testing or whether it is a "for cause" testing type of system such as the Southern Pacific is using quite successfully I do not know.

Senator EXON. In your railroads today, when you are screening applicants for the operating part of your railroads or when you are doing oversight, as I suspect you do from time to time from your operating people, have you ever gone to the drivers license record of the individual to give you some clue as to possible difficulties? For example, if someone has one or more arrests for driving while intoxicated, I would think that would be at least a mild danger signal that maybe this is someone you would not want to hire in the operating division.

Have you ever used that as a criteria for hiring people or checking on them later?

Mr. CLAYTOR. To the extent it is available, and I am not sure it is available to us, we have not. If it were made available through the national driver registry or any other way, we certainly would. We would like to do that. I think that was a very good suggestion, and it ought to be done, but I do not believe you can generally get that information just by asking for it. It is a privacy problem unless there is some regulation calling for it.

Senator EXON. Mr. Dempsey, can you enlighten us any on that?

Mr. DEMPSEY. My understanding is the same as that of Mr. Claytor. I think it would require either a rule or probably legislation.

Mr. HASSELMAN. In the case of new employees, we do perform a drug screen to determine whether there is any recent history of use of drugs or alcohol, for that matter. Now, insofar as the use of the driver's record is concerned, I guess it has been our thought that if it were available to us, at least with respect to present employees, it would not be something that we could really take into account in disciplining the employee or removing him from service. I think we have a lot more to learn on that subject.

Mr. DEMPSEY. I think that is right. I do not think that it could be put into use in disciplining current employees. I think that would violate our collective bargaining agreements without any question, but I think you were speaking about new hires.

Senator EXON. No, I was talking about both. Let me put the question this way. Suppose there was a story in the newspaper that one of your engineers was convicted of drunken driving where

someone was injured or killed. What, if any, action would be taken by the railroads? Would you just ignore it, or would you just wait and see what happened, or what would happen, if anything?

Mr. CLAYTOR. I think I would be inclined to hold an investigation, expecting that we would lose the case. I would start the discipline proceedings, but I think under the agreements that would be held to be not relevant, and we would lose the case. I think, however, that if I had that situation in front of me, I would take that action anyway.

Senator EXON. With all the combined experience that the three of you have had in the railroad business, you have never had anything akin or parallel to the antidote that I just suggested?

Mr. CLAYTOR. Well, I would not want to say that we never have on either my former railroad or on Amtrak because I would have to check it, but I do not ever recall such an instance.

Mr. DEMPSEY. I cannot recall seeing any grievance proceeding, but I will look into it and see if we can find anything.

Senator EXON. How about you, Mr. Hasselman?

Mr. HASSELMAN. I think it would be a fairly remote case that we would take disciplinary action in a circumstance like that.

Senator EXON. Gentlemen, thank you very much for being here. We look forward to seeing you here on Friday.

The subcommittee is adjourned.

[Whereupon, at 12:30 p.m., the hearing adjourned.]

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

ASSOCIATION OF PROFESSIONAL SLEEP SOCIETIES,
Washington, DC., February 17, 1987.

Hon. J. JAMES EXON,
Chairman, Surface Transportation Subcommittee, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, DC.

DEAR SENATOR EXON: The Association of Professional Sleep Societies (APSS) commends you for holding hearings on the issue of rail safety. A great many Americans suffer from sleep-related disorders. For example, 25 million Americans alone suffer from two such conditions—sleep apnea and narcolepsy. Situations in which a person operating a train suffers from a sleep disorder should be considered an important safety issue and receive the attention necessary to prevent catastrophes.

It has been estimated that 20,000 to 30,000 patients seek treatment each year for symptoms that place them at risk of falling asleep while operating a vehicle. Unfortunately, many times a person is prompted to seek treatment because he or she has had an automobile accident. We should hope the same does not hold true for those driving trains.

The U.S. Senate, in its report #99-152 accompanying the fiscal year 1986 Appropriations Bill for the Department of Transportation, has recognized the potential impact these disorders have on highway safety. The Association of Professional Sleep Societies believes that the potential impact on rail safety is also critical, and we urge you and the other Members of the Subcommittee to consider sleep disorders in your attempts to improve the safety of rail employees and passengers. The most important point we want to make is that most of these disorders are medically treatable. Clinical treatment can help many individuals with sleep disorders return to a normal, healthy, and certainly a safer life.

Again, we commend you for your attempts to improve rail safety and would appreciate you including our remarks in the record of your Subcommittee's proceedings.

Sincerely,

MERRILL M. MITLER, Ph.D.,
Chairman, Government Affairs Committee.

STATEMENT OF RICHARD A. GEIST [1] ON BEHALF OF THE HIGH SPEED RAIL ASSOCIATION

The High Speed Rail Association, founded in 1983, is devoted to exploring and advancing the design, development, construction and use of high speed rail passenger transportation. Among its members are the representatives of the financial community, the engineering and design profession, academia, labor unions, the construction industry, rail equipment manufacturers, material suppliers, service providers, and national, state and local government officials.

HSRA serves as a forum not only for an exchange of information and ideas among various parties having a stake in high speed rail, but also as an organization that studies and recommends professional practices to be following in areas such as safety design and ridership market forecasting.

Like similar state agencies in Florida, Michigan, New York and Ohio, and a city agency in Nevada, the Pennsylvania Commission is studying the feasibility of a 180- to 250-mph passenger railroad linking major cities, modeled after the successful high speed trains of Japan and Europe. In the Pennsylvania Commission's case, the route being studied is Pittsburgh-Harrisburg-Philadelphia, with stops in Greensburg, Johnstown, Altoona, State College and/or Lewistown, Lancaster and the Paoli area.

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[1] Member of Pennsylvania House of Representatives; Chairman, Pennsylvania High Speed Rail Commission; and Chairman, High Speed Rail Association.

As a result of the tragic Conrail-Amtrak accident January 4, many Americans may have a misconception about the safety of high speed trains. The fact is that true high speed trains, as operated in France and Japan, have been 100 per cent safe.

In fact, 23 years' worth of Japan's 130 mph bullet train service proves that true high speed railroading systems provide the safest transporation service known to man.

The problems in America is that we do not have a true high speed railroad, although at least 13 states are planning to build their own systems.

Although many Americans will be amazed to hear it, the Amtrak train going 100 mph was not a true high speed train. Americans are also unaware that ordinary run-of-the-mill trains in Europe now travel well over that speed, up to 125 mph. The railroad trade press considers any operation at 200 kilometers an hour (125 mph) and faster to be "high speed" rail. Amtrak recently raised the speed limit on certain selected stretches of its Northeast Corridor line to 125 mph.

At this time, there are only two true high speed trains, i.e., the TCV in France and the Japanese Bullet Train, although new systems are being developed in other countries, particularly Germany.

The Japanese National Railroad's Bullet Train system has carried more than 2 billion passengers without a single passenger fatality or injury. JNR operates the Bullet Trains on passenger-only trackage.

The same condition prevails in France, where the TGV passenger trains operate at 170 mph in normal, everday service over passenger-only trackage, and at lesser speeds of 100-125 mph on mixed/usage tracks, with sophisticated signal and control systems. The TGV, which entered full high-speed service in 1983, also has a perfect safety record.

The perfect safety record of these trains is the result of several factors. For one, they generally operate at their highest speeds only on trackage dedicated to passenger trains exclusively. Second, sophisticated computer train controls provide a crucial back-up to the trains' human operators. Of course, considerable attention is given to car-coupling devices, track structures, curve and grade limits, stress requirements, crashworthy construction, and other such factors.

In addition to safe transportation, high speed trains will bring other benefits to America, too.

For example, they offer additional transportation options for the nation's business and other travelers. They assure a tremendous burst of economic development. And, as has been true for every other significant transportation development, they offer the longer-run promise of increased economic activity and health wherever they are in place. Of course, the job-creation potential is enormous.

None of this should be construed as criticism of Amtrak, which has neither the mandate nor the money to provide true high speed trains.

While true high speed systems are 100 percent safe, Amtrak's overall safety record is the highest in our railroad industry,[2] and Amtrak, at present, is the safest form of travel in America today.

SHIPPENSBURG, PA, *March 14, 1987.*

Hon. ERNEST F. HOLLINGS,
U.S. Senate,
Washington, DC.

DEAR SENATOR HOLLINGS: On January 4, 1987 in Chase, Maryland, our son, Thomas C. Colley, eighteen years old, died in the AMTRAK/CONRAIL accident along with fifteen other people. Like TC, many of the victims were children.

We write to you to encourage you to join your colleagues in the Senate to legislate changes in the American rail system in order to prevent catastrophies of this kind from happening again.

We are aware that the Subcommittee on Surface Transportation of the Senate Commerce Committee conducted hearings on February 17, 1987, and, the Senate Committee on Commerce, Science, and Transportation held hearings on February 20, 1987.

Members of the Subcommittee on Surface Transportation took strong and laudable positions on many of the critical issues. These include mandatory random testing for drugs and alcohol, installation and use of a variety of safety devices, penalties

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[2] According to the Federal Railroad Administration in 1986, it was 1.84 accidents per million traffic miles, compared with 4.55 for the entire U.S. railroad industry.

for deliberate disabling of warning equipment, changes in scheduling and routing in order to separate freight from passenger vehicles, and strengthening of the authority of the National Railway Administration. We urge vigorous efforts so that when legislation is considered it will not contain language diluted by the persistent lobbying of various organizations purporting to represent the views of the operating staffs.

It was extremely disturbing to learn that the authority of the National Railway Administration is severely limited in dealing with penalties for railroad companies. In fact, it appears that the N.R.A. has *no* authoritiy to act against an individual found guilty of tampering with safety equipment to make it inoperable.

Both Mr. Riley, of the NRA, and Mr. Burnett, Chairman of NTSB, made encouraging statements concerning desirable corrective actions, but these will be achieved only with changes in legislation. Mr. Burnett's testimony about the absence of operable two-way communications, and the unsafe interiors of baggage and passenger care is *very* disturbing. Clearly, it should not be difficult to correct these deficiencies.

During the February 20, 1987 Senate Committee on Commerce, Science, and Transportation hearings there was apparent strong bipartisan support for strengthening legislation with respect to drug and alcohol testing. The convictions that members of the Committee expressed that public safety requires early congressional action in spite of the determined resistance of some of the witnesses and the organizations they represent, were encouraging. We hope that you, the Secretary of Transportation, and others concerned will see that good new legislation will be enacted quickly.

In contrast to the Committee members, the testimony of the members of the panels was appalling. For the parents of a lost child to hear that the witnesses bragged about how "clean" their industry is, what marvelous safety records they have, how their problem is minuscule, is nothing short of disgusting and nauseating. Have they no sensitivity to, or awareness of, the fact that no matter how clean their members are, innocent members of the public are being killed?

Incidentially, the January 4th crash was the second train wreck our son was in. The frist occurred in August of 1985 when the train in which he was riding struck a truck which was blocking the track in Mansfield, Ohio.

We are grateful for the persistence of some of the Committee members, in particular Senators Danforth, Exon, and Breaux, in their unwillingness to permit the witnesses to hide behind "constitutional rights" and "instrusion of privacy" when defending their extraordinary resistance to mandatory random testing. The witnesses claim to support testing, but their substitutes for mandatory random testing are simply unacceptable. For example, testing at scheduled times, such as regular physical examinations, would be useless because the employee will simply plan for the necessary period of abstinence. Also, testing for dexterity, or when there is probable cause, has been proven not to work. Witness the AMTRAK/CONRAIL accident, when the CONRAIL crew was observed by a representative of management for fifteen minutes just before departure, and the crash occurred an hour and fifteen minutes later. In post accident testing, both crew members tested positive for marijuana.

No matter how small a percentage of transportation workers may be users, the rights of the public to safe transportation operated by clean crews are far more important than the intrusion on privacy alleged by these witnesses. The lives of people are placed in the hands of those employees. If they cannot tolerate random, infrequent testing to increase safety for themselves, there colleagues, and the traveling public, let them find other employment. A well managed testing program, truly random by computer selection, may not eliminate all accidents due to drugs or alcohol, but will certainly act as a strong deterrent for users among transportation workers.

We appeal to you as a parent. Our son, like your children, was full of potential. He had just completed his first semester at The Rhode Island School of Design. His future was as likely to be productive and beautiful as that of any of this nation's best. TC was our only child. Please, Senator, protect your children and all the others who must trust the judgment, integrity, and wisdom of our generation.

Most sincerely,

THOMAS and SUSAN COLLEY.

US Department
of Transportation
**Federal Railroad
Administration**

JUN 1 - 1987

The Honorable Ernest F. Hollings
United States Senate
Washington, D.C. 20510

Dear Senator Hollings:

I recently received a list of 12 amendments that RLEA is seeking to offer in connection with the Railroad Safety Act Reauthorization. Many of those amendments are identical to the proposals which the Commerce Committee rejected by a near unanimous vote two years ago. The purpose of this letter is to review those proposals and to provide specific comments on each. In overview to that discussion, however, there are three points worth emphasizing.

For a number of years, the Railroad Safety Act Reauthorization has been an inviting target for parties seeking to accomplish economic objectives that are at best loosely related to safety. For some supply companies, that has meant a temptation to promote legislation (or regulations) requiring installation of their particular products. For labor, it has too often meant an effort to use the Safety Act as a vehicle for job creation by mandating labor intensive procedures, as a vehicle to acquire the ability to leverage Safety Act procedures against management during labor-management disputes, and as a vehicle to accomplish changes in work rules and conditions that could not be won at the collective bargaining table.

Whatever the merits of these causes might be in the abstract, they have no place in the safety bill. Once the principle is established that the safety regulatory process can be used as a vehicle to accomplish these types of objectives, we will have opened a Pandora's box that will prove very difficult to close as management, suppliers and other unions adopt the same tactic.

Equally important is the fact that these amendments have a clear, definable and negative impact on public safety. As much as we might like it to be otherwise, the dollars available for safety enhancement in both the public and private sector will always be finite. And regulations issued under the Railroad Safety Act have a significant bearing on how those resources are allocated. The real art of the regulatory process lies in steering these finite safety resources to the areas where they will have the greatest impact on public safety. To the extent that Congress and FRA steer those resources away from the most effective public safety uses to support objectives that are

less effective, or primarily economic, safety suffers. To the extent we pursue the tenth, twelfth, or fifteenth most important safety issues at the expense of the first and second, we misallocate limited resources to the detriment of public safety. As the succeeding papers illustrate, the major RLEA amendments fall in one or another of these categories.

Moreover, I share NTSB Chairman Jim Burnett's view that in the railroad industry, safety issues are already too deeply enmeshed in labor/management conflict. Legislative proposals (such as the Universal Standing Amendment) that would give one or both of these parties greater power to leverage the Safety Act against the other would inevitably draw safety even more deeply into the arena of labor-management conflict, at the public's expense.

There is a third conceptual issue relevant to most of these amendments. The FRA regulatory process provides a vehicle for raising the types of regulatory issues labor seeks to raise in connection with the Safety Act Reauthorization. Parties are authorized to petition FRA for rulemakings, and it is our practice to initiate formal inquiries with or without public hearings to assess the merits of each petition. Both the industry and shipper groups have utilized this process to raise their issues of concern. Labor, unfortunately, has made a practice of refusing to utilize the regulatory process, choosing instead to bypass FRA and go directly to Congress for legislative relief. No petitions have ever been filed on issues such as dispatcher work standards and employee casualty reporting. On several of the proposed amendments--such as bridge walkways and vehicle standards--RLEA had never even discussed the issues with this Administrator, formally or informally, before requesting legislative action. At the very least, parties seeking legislative intervention in the rulemaking process should be required to pursue the remedies available in that process before requesting legislative relief.

The Railroad Safety Act should not be the collective bargaining table of last resort for either management or labor. And it should not be used as a vehicle for either party to leverage the other during the ongoing labor-management negotiating process. Federal Railroad Administrators from both political parties have successfully opposed these tactics for nearly a decade. And for the past several years, a strong bipartisan block on this Committee has protected the integrity of the Railroad Safety Act by rejecting the same amendments that have been offered again this year. We are grateful for that leadership, and urge the Committee to remain firm in its commitment in the year ahead.

Yours very truly,

John H. Riley
Administrator

Enclosures

1. STANDING

RLEA's effort to acquire "universal standing" has been successfully opposed by Administrators of both political parties for nearly a decade. Of all the labor proposals this would be the most damaging to the public interest, since it goes to the procedural integrity of the civil penalty assessment process.

To put this amendment in context, it is essential to recognize that railroad employees do have the authority to bring suit against FRA for emergency relief when the health or safety of an employee is in immediate risk due to the Agency's failure to enforce safety standards. What labor now seeks is standing to sue even in non-emergency situations, where there is no immediate risk to employee health or safety. The single issue in these situations is whether or how much to fine a railroad company--and labor wants a direct say in those decisions. Under the RLEA proposal, any labor organization, or any individual employee, would have the right to place FRA on notice that they are dissatisfied with the level of the fine assessed on a company, or the decision to write an "exception" rather than a "violation". If FRA does not conform its actions to labor's demands within 60-days, the labor organizations may sue, and a court would arbitrate the difference. Note, incidentally, that at the same time it seeks a say in the levying of penalties against railroad companies, RLEA continues to take the position that employees should be exempt (as they are today) from direct enforcement of these same Safety Act provisions.

For its part, management opposes any broadening of the standing provision, but has responded to the RLEA proposal by asking that management's standing be broadened commensurate with any increase in standing granted the labor organizations.

The absurdity of these requests is obvious on their face. FRA should clearly have the same jurisdiction over individuals who violate federal statutory standards that it has over railroad companies. But neither labor nor management should have a "sign-off right" on how much the other party is penalized for alleged public safety violations. Such a system would convert FRA from a public safety agency to an easily leveraged addition to the arsenal of weapons used by labor and management in their ongoing disputes, most of which have nothing to do with safety. Specifically:

-- granting labor (and/or management) standing to litigate whether and how much FRA should fine the other party in non-emergency situations would hurt safety enforcement by throwing it even more deeply into the arena of labor-management conflict than it is today. It would siphon off critical safety resources into labor-management disputes, effectively converting FRA's authority to levy civil penalties to just one more weapon to be used by labor or management in gaining leverage on the other party.

At best it would force FRA enforcement priorities to be determined in courts of law by outside parties (management/or labor) with their own special interests. No safety agency can operate effectively under such circumstances.

-- There is absolutely no evidence that FRA is abusing its discretion in the use of its enforcement powers. Labor has brought suit against FRA to question prosecutorial discretion on numerous occasions, both under existing standing provisions and in an effort to judicially broaden them. The courts have ruled in FRA's favor on this issue in every case. Moreover, FRA has been aggressive in the use of its enforcement authority. Civil actions have been commenced in more than 99 percent of the cases recommended by field inspectors. Over the past three years, civil penalty collections have been two-and-a-half times higher than those collected in the previous three-year period. Civil penalties assessed and collected by FRA have historically been two to three times higher than those collected by its much larger sister agency, the Federal Aviation Administration.

-- The real success of a safety agency is not measured in civil penalty collections; it is measured in accident data. And accident rates in the railroad industry have been cut more than 60 percent during the 7 years in which RLEA has been seeking "universal standing"; 1986 was the safest year in the history of American railroading.

An expansion of standing for either management or labor would have an immediate negative impact on FRA safety enforcement efforts for another reason. Bear in mind that the same attorneys who write and revise regulations, prosecute citations and collect civil penalties must also defend any lawsuit brought against the Agency. There is a direct, hour-for-hour trade-off between time spent defending lawsuits and safety enforcement. That trade-off can be justified in emergency situations where an employee's health or safety is in immediate danger. It cannot be justified where the only issue is whether (or how much) to assess in civil penalties in a non-emergency situation. Under today's more limited standing provision, approximately 20 percent of FRA's safety legal man-hours are devoted to (successfully) defending lawsuits brought by the labor organizations and, in a few cases, railroad companies. This amendment would expand the occasions where such suits are possible from several dozen to several hundred thousand each year.

This is no idle concern. Railroad companies and railroad labor organizations have a history of being extremely litigious, as well as a history of seeking to use the safety program to leverage collateral objectives. For example:

-- In 1985, when FRA announced that its Office of Chief Counsel was drafting a rule authorizing the use of rear end telemetry devices, RLEA flooded the Office of Safety with more than 400 complaints and demands for investigation, mostly for extremely minor or technical rule violations. The apparent purpose was to flood the attorneys drafting the rule with competing demands, while attempting to "harass" the railroads seeking rule changes with fines and investigations. Had this proposal been in effect at the time, RLEA could have ground the rulemaking to a halt by filing suit in only a fraction of the 400 cases.

-- In 1983, FRA declined to limit the class of employees eligible to perform the intermediate power brake test to members of the carmen's craft, opting instead to require testing by any "qualified employee" (although recognizing the right of the parties to limit the work to carmen through collective bargaining). Despite the obvious lack of any emergency situation, the carmen litigated the issue of six separate cases, all resolved in FRA's favor.

-- Even should management and the labor organizations choose to behave responsibly, there is no effective mechanism for them to control the acts of individual members (or for the AAR to control the actions of all railroads). If the right to sue extended to non-emergency situations, a handful of dissident employees could seriously divert the Agency's resources with a wave of lawsuits. Case in point: A single disgruntled person once placed 75 telephone calls to the Administrator in a single workday, forcing the Office of the Administrator to shutdown the telephone system.

The legislative language adopted in 1980 recognized the legal right of an employee to seek specific performance of the Agency's emergency powers where there is a direct and immediate threat to employee safety. But Congress specifically denied RLEA a right to sue when the only issue involved was whether or not to levy a civil penalty against a railroad company in a non-emergency situation. That was a fair balance of the employees legitimate interest in safety enforcement, and the

II. THE SIGNALMEN'S UNION AMENDMENT, WHICH WOULD SUPPLEMENT CURRENT RAILROAD INSPECTION PROCEDURES WITH A PROGRAM OF MANDATORY GRADE-CROSSING EQUIPMENT INSPECTIONS, TO BE PERFORMED BY MEMBERS OF THE SIGNALMEN'S UNION.

This is the prototype example of an amendment apparently designed more to create jobs than to enhance public safety. It is the one of the few labor proposals that was actually presented to the Agency by petition; that petition was rejected by Administrator Jack Sullivan during the Carter Administration, and the concept has been strongly opposed by all succeeding Administrators. To understand why, consider the following numbers.

In 1979, the Carter Administration analyzed the accident histories of 22,625 grade-crossing accidents that occurred during the years 1976-1978, to determine what impact, if any, the signalmen's proposal would have on public safety. It found that in only three-tenths of 1 percent of the cases was there even an allegation that an equipment failure of some form had occurred (and this includes, incidentally, minor malfunctions, such as a burned out bulb in one of the multiple lights, that were clearly not the probable cause of any accident). Nor was there any credible evidence that a program of the type being promoted by the signalmen's union would have detected any problems that did exist in advance of an accident occurrence. On this basis, the Department decided against imposing a federally mandated program of testing and inspection. Instead, the Department focused its resources on what it determined were more productive areas--Operation Lifesaver, updating of the rail-highway crossing inventory and accident reporting systems, and of the resource allocation model and accident prediction formulas, initiation of a corridor improvement program for non-guarded crossings, and of course, the Section 203 program for construction of active warning devices.

When the signalmen's union recirculated the proposal last year, FRA announced its intention to duplicate the type of analysis performed during the Carter Administration on a more recent sample, to determine whether the conclusions reached in 1978 were valid today. In addition, FRA sponsored 2 days of public hearings in an effort to identify the most cost-effective means for both public and private agencies to enhance grade-crossing safety. The results of that reanalysis, and the recommendations

resulting from the public hearing, confirmed the conclusions of the original study.

In updating the 1978 analysis, FRA screened 21,370 accident reports from the years 1981, 1982 and 1983. 1/ Of the 21,370 cases, we found only 32 (fifteen-one hundredths of 1 percent) in which an allegation was made that an equipment failure of some form had occurred. In two additional cases, vandalism was a possible causative factor. To ensure that we would not bias the analysis, we assumed that in each of the 32 cases where there was a report of equipment failure, a malfunction did in fact occur, and was a contributing cause of the accident. A brief review of the cases suggests, however, that this may be an unnecessarily pessimistic assumption, and as a consequence, we believe the fifteen-one hundredths of 1 percent figure should be viewed as a "worst-case" figure. Moreover, nothing disclosed in the data or at the hearings suggested that the signalmen's proposal would have been more effective than the current system in ensuring advanced detection of any malfunctions that might have occurred.

These figures have led us to conclude that the Carter Administration was correct in determining that the establishment of a federally mandated testing and inspection program for automated grade-crossing devices would be a poor use of safety resources. It would have little, if any, direct impact on public safety and, indirectly, would almost certainly have a very negative impact.

The reason is that there are a number of alternative programs--including Operation Lifesaver and corridor improvement programs--where investment of railroad resources has produced a definitive impact in reducing accident exposure. But the dollars available for rail-highway safety enhancement are not infinite, either in Government or in the private sector. Diverting resources away from these areas to a lower yield and

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1/ Note that two demographic shifts occurring between the late 1970's and early 1980's may impact the comparability of the data. Between 1978 and 1981, the number of crossings equipped with active warning devices increased by 2,785 or 5.4 percent. Between 1981 and 1983, the number again increased by 1,891 or 3.7 percent from the 1978 base. Increasing the number of automated grade-crossings would tend to bias the numbers upward. Conversely, however, the total number of grade-crossing accidents declined sharply (34.4 percent) from 1976-1978 to 1981-1983, which would tend to decrease the numbers. As a consequence, we believe the samples are reasonably comparable.

highly labor-intensive program of the type proposed by the signalmen would likely have a negative, rather than a positive impact on accident reduction. There are three other points worth noting:

-- The State of Texas has developed what we believe to be a potentially effective (and cost-effective) mechanism for supplementing the railroads ongoing maintenance programs. Each automated grade-crossing on the State highway system in the State of Texas is marked with an identification number and "800" telephone number, which is answered on a 24-hour basis. The public is encouraged to call the 800 number to report everything from burned out lights to an observed equipment failure. Through its first year of operation, this system has proven to be effective, and if not abused, the system could provide a far more cost-effective mechanism to supplement current railroad inspection and maintenance practices than the more labor intensive program proposed by the signalmen's union.

-- In addition, many modern crossing devices are now equipped with event recording devices, self-diagnostic tools similar to the "black boxes" utilized in locomotives and mainline signals. These recording devices provide the railroads with a mechanism for constant monitoring of crossing device functioning.

-- Our inspection of the 1981-1983 data revealed one other interesting fact. We determined that there were 85 accidents over the 3-year period due to "intended non-operation"--i.e., accidents that occurred due to the disabling of signals during testing or maintenance, or accidents occurring due to the presence of insulated maintenance-of-way vehicles at an intersection. These are operating practice accidents, and they concern us. We have initiated discussions with the Association of American Railroads to determine what measures can be taken to eliminate or, at least, reduce exposure to these kinds of occurrences. It is interesting to note, however, that more accidents occurred in situations where grade-crossing devices were out-of-service for testing and maintenance than occurred in situations in which there was an allegation of equipment failure.

Finally, it is important to recognize that adoption of this amendment would be an incentive for other labor organizations (and some suppliers) to pursue a similar strategy, and seek to use the safety bill as a vehicle to create employment (or create markets for specific safety devices). In either case, public safety would be the loser.

III. VEHICLE STANDARDS

This issue has never been raised with this Administrator, and I have no idea what the amendment is about.

FRA is not in the business of regulating automobiles, trucks or boats, all of which are covered by other safety regulatory laws. In fact, any jurisdiction this Agency might claim over those vehicles has likely been preempted by other statutes. And from the scant information labor has provided, we are unable to determine whether this is actually a safety issue, or whether it deals with working environment and employee comfort issues that are more properly the subject of collective bargaining.

The proper course on this proposal is for RLEA to spell out its proposal in detail, and follow the procedures provided by FRA for raising new rulemaking issues. Upon receipt of the petition, the Agency will include it on the docket and, if appropriate, conduct public hearings. There is no justification for circumventing the rulemaking process through legislation when the petitioner hasn't even raised the issue with the appropriate regulatory agency. At the very least, parties seeking legislative intervention in the rulemaking process should be required to pursue the remedies available in that process before requesting legislative relief.

IV. ESTABLISH TRAINING/QUALIFICATION STANDARDS FOR EMPLOYEES WHO PERFORM INITIAL TERMINAL POWER BRAKE TESTS

First, recognize that existing regulations applicable to these areas do contain a qualification requirement. The real issue raised by this amendment is whether Federal regulatory authorities should revise those requirements and utilize their safety regulatory powers to establish a craft line by reserving this work for members of the carmen's craft (as opposed to members of the trainmen craft). Representatives of the carmen have for several years attempted to convince FRA to accomplish this in one of two ways:

A. A direct regulatory mandate that no one but a member of the Carmen's Union could perform the work, or

B. A revision of the present qualification standards in a way that would effectively prohibit anyone but a carman from performing the test.

The Agency has refused to do so, for good reason. And to understand what this amendment is actually designed to achieve, it is important to review the history of this issue.

In 1982, FRA modernized its power brake regulations in several respects. In the course of that proceeding, members of the Carmen's Union attempted to persuade FRA to reserve by regulation performance of the intermediate power brake test to members of the carmen's craft. FRA rejected that approach. Rather than adopting the union's position, the new rule required that the test be performed by an employee qualified by training or experience. In practice, that permitted either a carman or a trainman to perform the test if adequately trained. The rule did, however, explicitly recognize the right of the parties to reserve that work exclusively for carmen by collective bargaining agreement.

In 1984, RLEA sought to amend the Railroad Safety Act to mandate by statute that only carmen could perform this test. 1/ That proposal was opposed by FRA on three grounds:

- Trainmen are as susceptible to training in this particular procedure as carmen.

1/ The test itself is not a difficult one. It involves reading data from an air pressure gauge, and visually observing the set and release of the train power brakes.

- The FRA 1982 rulemaking did not overrule labor agreements defining this craft line; it simply declined to require a craft line through the use of federal safety regulatory authority. The rule specifically deferred to collective bargaining agreements reserving this work for carmen or trainmen. In each of the last two sessions, Congress apparently agreed with FRA's view that craft lines should be left to collective bargaining, not embodied in legislation. The Railroad Safety Act is a particularly inappropriate place for such restrictions.

- Statistics conclusively demonstrate that brake-related accidents did not increase in the years after the new rule took effect; they actually decreased, and decreased substantially. A case could not be made for the amendment on purely safety grounds.

In 1985, the proposal resurfaced in a somewhat different form. In 1983 and 1984, the Carmen's Union commenced a series of suits against FRA, alleging--in cases where trainmen had performed the test--that FRA had permitted the test to be performed by an employee who was not qualified by training and experience. FRA prevailed in all of these suits. RLEA next sought a legislative requirement that FRA issue specific qualification standards for employes performing the initial terminal brake test. Since the rule already contains a qualification requirement, FRA has always assumed that the objective was through report language or some other mechanism, to produce qualifications that would limit the work to carmen as a practical matter.

FRA opposed this amendment for several reasons:

- Again, there was no tangible evidence of diminished safety performance under the 1982 rule. Brake failures had declined steadily since the rule change.

- The proposal was superfluous to the rule, which already required that the test be performed by an employee qualified by training or experience. It's worth noting that the test itself is a relatively simple procedure, involving the reading of an air pressure gauge and visual observation of the brake setting and releasing.

The Senate again rejected the amendment.

FRA strongly opposes any effort to legislatively reserve this work for the members of a single craft; craft lines are appropriate topics for collective bargaining, but have no place in safety legislation. Moreover, FRA questions the need to expound upon an already stated requirement for training by qualification or experience on a test requiring at most a few minutes' training.

V. HARASSMENT

FRA takes no position on this amendment. This Agency opposes harassment of employees in any form. At the same time, we are well aware that charges and countercharges of harassment are common in all labor management environments. This is an issue for labor and management to address in their submissions to the Committee, and we are prepared to accept whatever findings the Committee makes.

VI. DISCLOSURE OF EMPLOYEES' NAMES

Rail labor proposes an amendment that would prohibit FRA from disclosing the name of any employee who has provided information with respect to an alleged violation of the safety laws, except for disclosure to the Attorney General if litigation becomes necessary.

This approach is questionable on its face. First, it is unnecessary, since it is FRA's firm policy to never release an employee's name without his or her consent. FRA's witness form plainly states that the signed statement will be provided to the railroad when a civil penalty is assessed, (since under normal rules of civil procedure, it is discoverable by the railroad attorney in the course of litigation). The employee has the option to sign or not sign. If the witness decides not to sign, the case is dropped for lack of evidence. In no case is a witness compelled to proceed against his or her personal choice.

Second, the amendment as drafted would effectively end an important aspect of FRA's enforcement program, a result we do not believe RLEA intended or envisioned. The reason is that in a certain percentage of cases, employee testimony is the only way to establish the existence of a violation (since there was no FRA witness, and no document or carrier admission to establish it). Most of these cases are brought to FRA's attention by the employees themselves.

The employee's statement is never used in these proceedings without the employee's written consent. Note, however, that this amendment would go beyond protecting nonconsenting employees to forbid the use of an employee's statement even when the employee consents to its use. That would effectively prevent FRA from ever prosecuting a case based solely on an employee complaint, and would limit our enforcement activity to those violations actually observed by FRA inspectors, or proven by carrier documents and admissions. That is an unnecessary restriction, one that runs counter to the public interest, and a result we truly do not believe RLEA intended.

VII. CONRAIL EAP

RLEA proposes that the Department of Transportation evaluate Conrail's Employee Assistance Program. We are unaware of any reason for singling out Conrail's program for special attention, and believe our safety resources can be put to better use. Obviously, however, this is not a major issue with the Department.

VIII. HUMAN FACTOR ACCIDENTS--EMPLOYEE ASSIGNMENT OF PROBABLE CAUSE

We recognize that all labor organizations have an obligation to defend their employees, and thus must take the position that no (or at most, very few) accidents are attributable to employee error. But this amendment carries that principle beyond the point of reason.

First, the amendment is completely unnecessary because employees have multiple opportunities to state their views on accident causation today. FRA inspection personnel investigate the 300 most significant accidents/incidents each year. Our investigation practice involves interviewing all concerned, and no one who wishes to enter a statement is denied that right. On those accidents FRA investigates, employees are always consulted, and their views made part of the record, whether the Agency ultimately sustains or disagrees with their views in its findings of probable cause.

The remaining reportable accidents are generally minor ones, and are logged by railroad-submitted accident and incident report forms. The labor allegation that railroads use these reports to cover up their complicity by wrongly ascribing accidents to human error flies in the face of the fact that railroads assess primary fault on themselves, rather than their unionized employees, in approximately 69 percent of the cases. This is roughly the same percentage found in cases FRA directly investigates. Moreover, any employee who questions whether an assignment of human error in a railroad accident report is proper has a right to take his position to FRA, either by telephone or by letter. His position will be entered into the record in all cases, and FRA will spot check such cases, and analyze the data for trends that might indicate a pattern of erroneous reporting. Finally, any employee subjected to disciplinary action as a result of a human error finding (and discipline invariably follows human error findings) has an absolute right to file a grievance, and have his case heard before a neutral arbitrator in a proceeding under the Railway Labor Act.

In short, there is no evidence that any party is abusing the current accident reporting system, and in fact the employees have extensive opportunity to present their version of each incident.

RLEA's proposal that employees play a formal role in the tens of thousands of minor accident and incident reports FRA receives

each year poses immense logistical problems. FRA would have at least two versions of causation for any accident or incident on which labor submitted its views; presumably, FRA would have to investigate all such accidents to see who was correct and then enter its finding into the data base. There is simply no way to attribute an accident to two different causes without rendering the data base meaningless.

IX. MONTHLY LIMITATION ON ENGINEER SHIFTS

At the outset, recognize that this is not a Railroad Safety Act issue. Hours of service limitations are set by a separate and distinct statute--the Hours of Service Act--and that Act should not be reopened through the backdoor by an amendment to the Railroad Safety Act.

On the merits of this issue, FRA has been unable to support union allegations that fatigue from overwork has played a causal role in any of the major accidents investigated over the past three years. In each of the major accident investigations, we have determined that the employees' assignments were within the rules established by the Hours of Service Act, and they have in fact exceeded the statutory minimums in all but a handful of cases. More generally, however, FRA takes note of the fact that the Hours of Service Act has not been subject to oversight in recent years, and would support and work with the Committee in a separate oversight review of Hours of Service issues.

If those issues are to be examined, it should be done in a comprehensive way, through the public hearing process. The amendment proposed by RLEA does exactly the opposite, and is bad public policy for a number of reasons:

- it applies only to engineers. If shift limitations are appropriate, why should they apply only to engineers, and not to the hundreds of thousands of other employees (such as clerks, signalmen, and other operating employees, etc.) covered by Hours of Service Act provisions?

- How did RLEA arrive at the number 22? Is it too high or too low? Should the number of shifts vary with the length of time on a shift? Remember, shifts vary by length of duty time, by time of day, by the spacing of tours in the month, and by the nature of the particular service. Should there be any limit on the ability to call these shifts consecutively, rather than in a more evenly spaced sequence over the 30 days? Recognize that under the RLEA proposal, an engineer could be required to work 8 hours on, 8 hours off, 8 hours on, and so on, until 22 shifts were reached. Such a proposal does not seem to advance the cause of safety. And finally, is there any evidence supporting the proposition that the number of shifts worked (rather than the length of the off duty periods) is a safety issue; or is this a working condition, rather than a safety issue? Note

that any shift limitation will by definition require the hiring of more engineers. These are just a few of the critical questions underlying any policy decision as sweeping as the one proposed by this amendment. We have seen no analysis on any of these points, and no indication that an analysis was ever performed. The number 22 seems to have been "plucked from the air", and while FRA is quite willing to work with the Committee in undertaking a review on the adequacy of present hours of service provisions, decisions made on these important policy issues should be based on real data and serious analysis.

- Two versions of the amendment have been circulated, one which absolutely limits engineer shifts to 22 a month, and one which prevents an employer from demanding more than 22 shifts, but permits the employee to work beyond 22 shifts at his election. The later draft is clearly not a safety amendment.

  The Hours of Service Act was designed to protect employees from two kinds of greed--the companies', and their own. Remember, employees are paid by the shift. This is a powerful incentive for employees to seek multiple duty assignments and even in some cases to cheat on hours of service limitations. A 22 shift limitation either does or does not have safety implications. And if it does, it is as important to limit the employees' incentive to overwork as it is to limit the employers' incentive to over assign. A "one-way" shift limitation is a purely economic amendment, since rather than eliminating an unsafe practice, it merely reserves the right to resort to that practice to the employee.

These are complicated issues that deserve meaningful analysis in the context of a full review of the Hours of Service Act. If there is to be a reconsideration of that Act, it should be a comprehensive reconsideration of all issues, applying to all crafts, following Congressional hearings on that precise subject. FRA believes there is some merit in undertaking such a review, and would be happy to work with the Committee in preparing for such hearings, and in identifying possible amendments to the Act.

X. MAINTENANCE OF WAY AMENDMENTS

Recognize at the outset that these issues were never even discussed with the Administrator before submisssion of the proposed amendments.

If provided with substantive arguments and data supporting those proposals, FRA would be willing to give them a thorough and fair examination. But RLEA should be required to raise these issues the way all other rulemaking proposals are raised--through the petition and safety rulemaking process. There is no point in having a railroad regulatory authority if the legislative process is to be the court of first resort in cases such as this.

Moreover, we presently have no evidence, and have been presented with no evidence, that a rail safety problem exists that these proposals would solve. At least some of the proposals appear to deal solely with working condition issues, which should be settled in collective bargaining. But from what we now know of these amendments, the following comments seem in order:

(a) Standards for bridge safety equipment are provided by Occupational Safety and Health Administration rules at 29 CFR Part 1926. FRA sees no purpose in the creation of duplicative standards. Certainly, FRA has no place prescribing boat standards.

(b) FRA reviewed the issue of walkways on bridges in 1978. Our study of accident histories and our cost analysis did not justify adoption of such standards at that time. The accident data since then would not appear to change that conclusion.

(c) FRA is not in the business of regulating automobiles or trucks, and probably lacks the authority to do so even if it were so inclined. It is, of course, important that employees be appropriately separated from tools and hazardous materials in vehicles. But the major part of this proposal appears to fall within the jurisdiction of NHTSA, OSHA, and state and local jurisdictions. If RLEA would present FRA with the details of their proposal, supporting data, and an explanation of why they believe this falls within FRA's jurisdiction, FRA would give it a full and fair hearing.

(d) We believe that removal of insulation from on-track MOW vehicles would endanger MOW employees through misplaced reliance on such vehicles to shunt a track circuit. These vehicles lack the weight and multiple wheel sets of rolling stock that ensure necessary protection. This amendment could easily endanger an employee's life, and FRA opposes it on the merits. We cannot understand why labor would forward such a proposal.

(e) If provided with substantive arguments and data supporting this position, FRA would be willing to examine it.

(f) As with the other MOW proposals, the subject of MOW camp cars has never been raised with FRA. It also may be an issue of working conditions under the sleeping quarters provision of the Hours of Service Act, rather than a safety issue germane to the Railroad Safety Act. Again, however, if provided with substantive arguments and data supporting this proposal, FRA would be willing to examine it.

XI. CAUSE OF ACTION FOR IMPROPER ALCOHOL AND DRUG TESTING

FRA has not tolerated and will not tolerate any misuse of alcohol and drug testing under the FRA rule as a means to harass or embarrass employees. However, we question the wisdom and the necessity of singling this one area out for creation of a federal statutory cause of action.

First, FRA's rule already contains sanctions against railroads that utilize post-accident testing contrary to law, or that willfully and with actual knowledge require reasonable cause testing without reasonable cause. Our pending Safety Act Reauthorization proposal would increase those penalties fourfold. The rule also contains sanctions for violations of procedures and safeguards designed to ensure accuracy and fairness in testing. FRA has already employed these sanctions in several cases, but all entail an apparent failure to understand the law or accurately determine the facts rather than a willful act of harassment.

Second, employees have rights of redress under existing law and agreements. If a supervisor's action constitutes a violation of a collective bargaining agreement, the grievance procedure under the Railway Labor Act permits an action by the aggrieved employee. Moreover, the employee may also have an actionable tort claim against the railroad or supervisor depending upon the circumstances and type of injury. Common law or state statutes often provide a cause of action in such cases.

Third, the vagueness of the proposed statutory standard ("cases where an employee is tested for alcohol and drugs in violation of the federal regulations or a railroad's own rules") guarantees abundant litigation. Such a standard would tend to discourage legitimate testing. A supervisor uncertain of some detail of law or fact has an incentive to opt against testing where actually required by law or company rule. The failure to test would subject the railroad to a fine if federal rules required testing, but this sanction pales in comparison to a tort action that could result in large litigation costs or huge punitive damages against an individual railroad employee. Faced with such a choice, many supervisors would choose to avoid testing, whenever possible, thus lessening the deterrent value of the FRA alcohol and drug rule and causing the loss of information vital to accurate determination of the cause of performance failures.

In view of the remedies already in place to protect employees against abusive testing and the absence of any record of systemic abuse, we believe RLEA's proposal is bad public policy. If the proposal is seriously considered, it should be revised to apply only in cases of willful violation of testing rules on the part of a railroad with actual knowledge of the relevant facts.

XII. DISPATCHING

Over the past 36 months, dispatching errors were found to be the likely cause of two fatal accidents. From the facts of those accidents, it is impossible to determine whether these were unrelated instances of human error, or symptoms of a more systemic problem--in training, in supervision, in the application of union work rules, in communications, in the structure of the dispatching system, or in some other aspect of train operations. These questions prompted FRA to commence a national assessment of railroad dispatching practices in February of this year. The assessment team is headed by FRA's senior dispatching inspector, Frank Bridges of our Denver office, and will involve about two-thirds of FRA's dispatching experts.

To the best of our knowledge, there has never been a comprehensive study of railroad dispatching practices. The basic assignment of the Bridges group is to gather that data base and analyze all aspects of railroad dispatching from personnel selection to training to work rules and practices. The study involves an audit of 36 dispatching offices geographically distributed across the nation, and across the various types of carriers. FRA has also committed three-quarters of a million dollars to research on dispatching technologies. The Bridges group is charged with concluding its assessment, and reporting its findings and recommendations, no later than October 1, 1987. The report will be released, and public hearings held on all recommendations. FRA will pursue, through the regulatory or legislative process, whatever recommendations result from the report and hearing process.

FRA is not certain of the origin or intent of this labor amendment on dispatching. There is real irony in the amendment, however, because FRA has played the leadership role in addressing the dispatching issue, and structuring a process for all parties--labor and management included--to voice their points of view. RLEA can hardly accuse FRA of inaction on the dispatching issue. And the RLEA amendment is a narrower and less effective mechanism to address it than the procedure established by this Agency.

Without waiting for the results of the assessment, this amendment presumes that there is a systemic problem (rather than two unrelated cases of human error), presumes that the problem is in training (rather than in the technology used, in the quality of supervision, in the application of union work rules, or in the structure of the system itself) and concludes that a series of training rules is the proper solution. It may be that the amendment is designed to narrow the scope of the assessment by shifting its focus away from any finding of human error. But whether this is true or false, the fact is that it makes no sense to narrow the scope of an ongoing assessment and prejudge its conclusions. This is not a case where completion of the "study" is years away; the assessment will be completed by October 1, and could well be public by the time this bill becomes law. Labor will have ample opportunity to argue its viewpoint during the assessment, and in the public hearing process that will follow.

Moreover, this is another case in which RLEA never bothered to petition FRA for a rulemaking, and simply took its case directly to Congress. Neither RLEA nor any other interest group should be permitted to short-cut that process at will. RLEA should participate in the dispatcher assessment now in progress, as all other interested parties are doing. FRA strongly opposes any amendment that would limit the scope of that assessment, or define a mandatory response to the issue before the data base necessary to analyze the issue has been compiled and released for public comment.